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Neal Robert Allen

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**The Effect of a Supreme Court Opinion Outside the Judicial System:
An Analysis of Brown v. Board of Education and the American South**

Committee:

Hershel W. Perry, Supervisor

Lucas A. Powe

Walter Dean Burnham

Gary J. Jacobsohn

Stephen H. Marshall

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An Analysis of Brown v. Board of Education and the American South**

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Neal Robert Allen, B.A.; M.A.

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**The Effect of a Supreme Court Opinion Outside the Judicial System:
An Analysis of *Brown v. Board of Education* and the American South**

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Neal Robert Allen, Ph.D.

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Supervisor: Hershel W. Perry

This dissertation seeks to describe and explain the connection between The Supreme Court and politics outside of the judicial system. It is a case study of the reaction to the *Brown v. Board of Education* integration decision in the American South. I apply a theoretical model of “judicialization,” arguing that when courts affect politics outside of the judicial system, they reshape politics to resemble the adversarial legal system, sparking polarized conflict and causing non-judicial political actors to make arguments in the form of constitutional doctrine. Analyzing editorials and letters to the editor from Southern newspapers, I show that debate after *Brown* was characterized by appeals to constitutional principles, and that *Brown* increased the salience of segregation in schools as a subject of political debate. I also supplement my Southern newspaper data with data from African-American newspapers and analyze Southern elections in the periods immediately before and after the education integration decision to assess the impact of the Court’s education decision on both voters and candidates.

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Chapter 1: Introduction and Overview: The Supreme Court and the Broader Political System

For the states to deny the power of the Court to regulate the purely internal affairs of the separate states would not constitute nullification by the states, but a refusal to permit nullification of the Constitution by actions of the Court in assuming powers it does not possess, under the Constitution - J.R. Creighton, from a letter published in the *Richmond (VA) News-Leader*, Jan. 3, 1956.

With *Brown v. Board of Education*, the United States Supreme Court remade politics in the American South. One particularly important effect of the landmark integration opinion was to change the way Southerners talked about race, law, and politics. The above quotation, written in a letter to the editor from a resident of South Carolina, shows the constitutional form of argument prevalent after the Court's decision. The author is advocating a particular view of the structure of government, based on a states' rights theory of constitutional interpretation. He is arguing for a narrowed role for the Supreme Court, as constituted by the Constitution. This dissertation focuses on how the Supreme Court affected politics outside the judicial system, and how it drew citizens like J.R. Creighton into a dialogue about the proper functioning of the constitutional system.

This dissertation seeks to answer the question "What is the effect of a United States Supreme Court opinion?" I conduct a detailed historical study of the impact of *Brown v. Board of Education*, concentrating on the decision's impact outside the judicial system. Such a focus allows me to produce an empirical analysis of the decision's impact, a theoretical framework for understanding indirect opinion effects that is

transferable beyond the issue area of school integration, and insight into the Court's role in American politics. This dissertation makes a contribution to political science scholarship about the Supreme Court, court impact, and American Political Development. This opening chapter presents the research puzzle this dissertation attempts to solve, and the theoretical framework of the inquiry. It closes with a discussion of each of the four empirical chapters, and how they together constitute an analysis of the effect of a Supreme Court opinion outside the judicial system.

The impact of judicial decisions is the subject of an extensive literature produced by political scientists studying law and courts. Much of it, notably *The Hollow Hope* by Gerald Rosenberg, has come to the conclusion that the Supreme Court has little impact upon political and social change. This dissertation argues the contrary position that the Court, through its opinion, can have a significant impact on American politics. I argue that the Court's extra-judicial contribution can be best understood as "judicializing" political conflict. An opinion like *Brown* makes the political process concerning school integration more like a judicial process. Competing groups occupy roles similar to opposing sides in a trial, with political actors polarized into competing camps. Political actors, like politicians, parts of government, interest groups, and courts themselves function like participants in an adversarial judicial system. This dissertation explores how the Supreme Court's extra-judicial¹ effect is an institutionally-specific effect, transmitting characteristics of the judicial branch to other parts of the political system.

¹ The focus on extra-judicial effect contrasts with that of much of the literature on judicial implementation (See Horowitz 1977), which finds courts have limited capacity to mold social policy.

Making this argument about the Court's causal role in the political process requires a detailed empirical inquiry into the relationships between the Court and other parts of the political system, including institutions like Congress, the President and state governments as well as groups and citizens. It also requires a reconceptualization of events and ideas in a manner that relates the actions and arguments of non-Court political actors to Court opinions.

I. THEORY

This dissertation attempts to identify and describe the role of the Supreme Court in a highly complex change process in the 1950s and 1960s. Conflict over school integration involved all major components of the federal government: presidents, Congress, higher and lower courts, bureaucratic agencies, the military. It also involved states as makers of law, providers of services, and enforcers of law. The conflict reached both elite and mass, and implicated fundamental ideas and disagreements about American politics. The theory I propose to test is an attempt to conceptualize the role of an important Supreme Court opinion within this complex change process. The following set of analytical constructs conceptualizes Court-involved political conflict that allows me to ascertain the contribution of the Court to the debate over and settlement of important issues.

I propose that the Supreme Court affects American politics with major decisions like *Brown*, reorganizing conflict in a particular issue area. The Court changes political conflict into a form that parallels the organization of conflict within the judicial system. Alexander Hamilton wrote in *Federalist* 78 that American courts “have neither force nor

will, but merely judgment,” and that the judiciary “can take no active resolution.” This limitation to “judgment” channels the Supreme Court’s power into the realm of political ideas. The Court can directly affect what ideas are part of settled law, and which ideas are permissible or impermissible as motivations for government action. *Brown* made the idea of segregation impermissible as an organizing principle of American society. But I am concerned in this project with the Court’s indirect effects on political conflict and the place of ideas within such conflict. The following concepts form the theory that I hope to explore in this dissertation.

Judicialization of Political Conflict

After the Court judicializes a given issue area with the issuance of a transformative opinion, certain kinds of arguments are more likely to be made and be successful than before the opinion. Arguments will be framed in terms of legality, constitutionality, jurisdiction, and adherence to core principles. These arguments will be less amenable to settlement through legislative and executive bargaining, and debate participants will gravitate toward categorical solutions that exclude the possibility of compromise.

I do not mean by judicialization the growth of the power of courts, or the conversion of legislative or executive areas of policy power to ones characterized by judicial power. This inquiry is directed at understanding the effect of *Brown v. Board of Education*, which is the paradigm case of what Rauol Berger has called “Government by Judiciary” (1977). But I am not concerned, as Berger and others are, with documenting or criticizing the growth of judicial power in America. I am not interested in the project

of identifying the process by which courts in general, and the Supreme Court and lower federal courts in particular, came to make decisions governing the administration of public schools. I take that growth of direct judicial power as a given, and proceed to study indirect judicial power.

I also am not using judicialization in the related way it is used by scholars of comparative public law to describe the rise of independent high courts and increasing judicial resolution of disputes outside of the United States. Alec Stone-Sweet, in *Governing With Judges: Constitutional Politics in Europe*, argues that European politics has undergone a “judicialization of law-making,” which he defines as “(a) the production, by constitutional judges, of a formal normative discourse that serves to clarify, on an ongoing basis, the constitutional rules governing the exercise of legislative power, and (b) the reception of these rules, and of the terms of this discourse, by legislators” (p. 195). While Stone-Sweet’s judicialization process concerns the formal power of courts, my theorized judicialization process concerns the informal power of courts. While I am concerned with the reception of Court decision by legislators, the kind of effect I am looking for is different.

For the purposes of this project, judicialization is the transformation of political conflict to a form similar to the form of judicial politics. Judicialized politics is characterized by polarized conflict, discussion of the constitutionality of government action, and argument focused on constitutionality. Political conflict that has been judicialized by the Supreme Court is most similar to the form of appellate courts engaged

in judicial review, assessing whether a given government action is consistent with the Constitution.

My theory of judicialization of political conflict has two components that are the focus of this dissertation: social/political doctrine and constitutional advocacy politics. Social/political doctrine is argument presented by political actors outside of the judicial system that advocates a particular understanding of the constitutional system. Constitutional advocacy politics is a kind of political conflict in which groups and actors take polarized positions on constitutional issues, and those polarized positions define the wider conflict in venues like campaigns and elections.

The arguments that interested groups put forth in response to a Supreme Court opinion will articulate and reveal existing social/political doctrine. This doctrine will have the characteristics of constitutional doctrine, with theories of interpretation, identification of sacred higher law texts, conceptions of institutional design, and logical arguments. These doctrinal positions will support, oppose, or both support and oppose the Court opinion.

The extra-judicial effect of a transformative Court opinion is stimulative of this creative process. In response to the challenge of an argument presented by the judicial branch of the federal government, affected groups will reconceptualize and present to the larger community a justification for their values, laws and political institutions. This justification, while built upon an existing worldview, is organized in the form of legal doctrine. With an opinion on constitutionality like *Brown*, the Court stimulates an

alternate process of the construction of meaning, which is presented as a competing theory of constitutional interpretation.

Opinions like *Brown* not only stimulate argument about constitutionality, they motivate politicians and citizens to act in support of their chosen understanding of the constitutional system. Federal and state officeholders use their positions of power to support or prevent change to existing institutional arrangements, and support or oppose policies that implicate their constitutional visions. Citizens use their power as voters to support particular politicians engaged in constitutional politics. Such actions constitute constitutional advocacy politics, or the transformation of normally non-constitutional arenas of conflict into arenas in which the proper form of the constitutional system is contested.

OUTLINE OF THE DISSERTATION

The first empirical chapter of this dissertation, Chapter Two, examines the effect of *Brown* on political debate in the American South. The South was committed to segregation, and the Supreme Court's challenge to separate schools was a direct attack on the region's social system. The reaction to the decision was swift and negative, and Southern politics were dominated by opposition to integration for years, and for decades in some states (see Klarman 2004, Bartley 1969, and Black 1976). The electoral ramifications of that backlash are discussed in Chapter Four, but this Chapter examines shifts in how Southerners discussed integration and other racial issue before and after *Brown*.

In order to assess the effect of Brown on political debate, I assembled a data set of newspaper opinion in the 1950s. I collect every editorial or letter to the editor that discuss race in five Southern newspapers, covering 1950-56. The five papers chosen, from Richmond, Virginia; Birmingham, Alabama; Florence, South Carolina; Meridian, Mississippi; and Bryan, Texas, provide data from large and small newspapers, and from different parts of the Southern region. I examined every editorial and letter to the editor in those five newspapers over six and a half years, looking at over 10,000 editorial pages, and collected 648 editorials and 791 letters to the editor. I selected race as a subject to capture discussion of Brown, as well as other racial issues. Examining both editorials and letters to the editor allows me to study both elite and mass opinion, expressed in a public forum.

In examining this non-random, yet diverse sample of Southern opinion on race in the 1950s, I find that constitutional arguments are more prevalent after Brown than before. This finding occurs across newspapers, and derives from both qualitative and quantitative analysis. After Brown, writers of both editorials and letters responded to the Supreme Court's decision with arguments about the constitutionality of segregation, and presenting theories of interpretation, particular interpretations of the Constitution, and theories of the historical foundations of American politics. Taken together, these editorials and letters form a doctrinal response to Brown, and reveal a regional social/political doctrine. These qualitative conclusions are supported by quantitative analysis, with discussion of race increasing after the decision, and that discussion more

constitutional in content. This chapter contributes to scholarship on Supreme Court impact by finding a particular kind of indirect effect through use of a new data set.

Chapter Three is an analysis parallel to Chapter Two, directed at African-American newspapers. I look at editorials sampled from three African-American newspapers, the Chicago Defender, Atlanta Daily World and Birmingham World. This chapter finds that while reaction in the black and Non-Southern papers followed the same judicialized pattern as Southern papers show, the massive reaction to Brown did not occur. I find that the amount of constitutional argumentation in black newspaper editorials increased, but the overall quantity of editorials that discussed race decreased.

Race was the predominant subject on black newspaper editorial pages before the Supreme Court's decision, and thus Brown's impact was limited to altering the frame of argument. The kind of intense discussion that dominated white-oriented newspapers after Brown was already evident in black papers before the decision. I argue that racial differences are an important factor affecting the reception of Supreme Court decisions on racial issues, and that the Court's effect is strongest on the beneficiaries of white supremacist institutions and values.

Like Chapter Two, Chapter Three presents qualitative, as well as quantitative analysis of newspaper opinion. The text of editorials in African-American newspaper exhibits much of the same judicialized argumentation as the five white newspaper analyzed previously, with increased attention to issues of constitutionality and institutional power relationships. The black paper editorials lack one particular theme that was prominent post-Brown in predominantly white newspapers, the proposing of

potential alterations of the constitutional system. This lack of support for altering the constitution likely arises from the hope of black political leaders that the Supreme Court decision would contribute to the weakening and eventual demise of Jim Crow segregation. This hopefulness about the Brown decision is evident in the frequent claim in black newspaper editorials that the power of militant segregationist politicians was diminishing.

Southern politics did not follow this integrationist path hoped for in black newspapers, at least not in the immediate post-Brown period. Chapter Four examines the backlash to Brown in Southern campaigns and elections in the 1950s and the effect of that backlash.

Chapter Four discusses the path of Southern electoral politics after 1954, focusing on the connection between the Supreme Court decision and the careers of Southern politicians. This chapter builds upon existing scholarship about Southern white backlash, and focuses on the Supreme Court's role in stimulating that backlash. I find evidence for Brown's effect in Southern elections in the 1950s, finding that conservative segregationists were much more successful after Brown than before.²

The careers of important segregationist politicians are particularly useful in illuminating the effect of a Supreme Court decision outside of the judicial system. I trace the effect of Brown on the behavior and success of chosen elected officials who were significant in the change process that led to a national commitment to racial equality in the 1960s. This Chapter examines three governors: George Wallace of Alabama, Orval

Faubus of Arkansas, and James Byrnes of South Carolina, as well as Eugene “Bull” Connor, an unsuccessful candidate for governor of Alabama.

The career of Birmingham Police Commissioner Bull Connor is an illustrative case. Like many of the reactionary segregationist politicians that held power in the post-Brown backlash era, he had served in public office before the Supreme Court decision. He finished last, running as a reactionary segregationist in the Democratic primary for governor in 1950, and by 1953 he was forced from office by allegations of corruption and infidelity. While opposition to racial integration had always been part of Connor’s public image, he put the issue at the center of his mid-1950s attempts to get back into power. He was successful in this quest, riding racist backlash to victory in 1957. This resurgence of Connor’s career as a reactionary segregationist is reflective not just of a broader trend in Southern politics, but also this resurgence put him at the right place at the right time to play a crucial part in the integration of Southern society, as he led the violent suppression of civil rights protests in 1963.

Chapter Four finds Brown caused a massive backlash in the white South, and this backlash remade Southern politics into a politics of militant opposition to integration. This finding, while in many ways intuitive, actually challenges scholarship on Supreme Court impact, particularly *The Hollow Hope* by Gerald Rosenberg. I argue that conflict over integration constitutes constitutional advocacy politics. Southern white politics, which because of disenfranchisement of black voters constituted Southern electoral politics, was occupied with polarized conflict over its segregationist social and political

² J. Harvie Wilkinson, currently a federal judge on the Fourth Circuit Court of Appeals, wrote in *From*

system. Some Southern politicians used their positions of power to present critiques of the Supreme Court's argument, with the Southern Manifesto of 1956 as the most prominent example. Other elected officials like Bull Connor, George Wallace and Orville Faubus used the institutional resources of their offices to oppose integration, expanding their constitutional argument into violence in some cases.³ The backlash, taken as a whole, was a regional, multi-institutional movement advocating a particular position on proper organization of the constitutional system. Support for States' Rights, segregation, and white supremacy were presented, often but not always in a coordinated manner, as a kind of regional constitutional argument. This chapter analyzes how that argument drove Southern elections of the 1950s.

Chapter Five integrates the empirical findings of previous chapters into the analysis of American Political Development. This chapter analyzes the Supreme Court's role in the development of American political institutions. Here I use the empirical findings of other chapters to present an extension and critique of Rosenberg's argument in *The Hollow Hope*. I draw on the work of Rogers Smith and Angus King, using their concept of racial institutional orders to integrate reaction to *Brown* with other events like the direct action civil rights movement and 1960s civil rights legislation.

Southern Politics in the 1950s was a painstakingly constructed and highly effective equilibrium system, designed to prevent Northern challenge to the Jim Crow

Brown to Bakke that "Nowhere in the region did black rights make good politics" after *Brown*.

³ I more fully explore the connection between official government action and constitutional argument of integration in "Violence and Non-Violence as Constitutional Argument: An Analysis of the 1963 Civil Rights Demonstrations in Birmingham, Alabama" in Eickelman et. al 2005.

system of racial segregation. The Supreme Court was the only part of the national government that was not an integrated part of this equilibrium system, and when the Court promoted integration it sparked opposition from white southerners. I argue this opposition was not merely an example of privileged elite and mass actors defending their prerogatives, but the defense of a white supremacist constitutional order.⁴

The backlash against *Brown* took the form of not just support for segregationist politicians, but the production of an alternate constitutional doctrine opposing the Court's argument. I argue that Supreme Court decisions can identify and stimulate such broad reactions, making clear the deep popular and institutional support for particular political doctrines. I argue that examining how the Court stimulates the defense of deep institutional orders helps to explain how the Court and constitutional law affect the development of American politics. The reconstruction of institutional orders, which occurred with the adoption of legal commitments to racial equality in the 1960s, demonstrates the continuing importance of Supreme Court decisions on broader American politics.

Chapter Four continues this work's engagement with the argument of Rosenberg in *The Hollow Hope*. Rosenberg finds that court decisions only lead to social change in the rare occasions that certain constraints on court action are absent, and certain conditions that support court action are present. I agree with Rosenberg that such constraints and conditions are important determinants of the effectiveness of court

⁴ Rogers Smith and Angus King (APSR 2005) recently argue that American politics has always been, and is currently characterized in part by conflict between a white supremacist racial order and an egalitarian racial order. Also Paul Frymer (APSR 2005) argues that institutional structures often cause racist behavior

decisions, and the Supreme Court has limited control of them. I argue, however, that a dialectical change process stimulated by the Court can overcome constraints and contribute to social change in the absence of conditions conducive to change. If negative reaction to a decision like Brown can help lead to social change, even in an issue area where Rosenberg's constraints are evident and his conditions are absent, then possibly the Court is a venue of possibility for the advocate of social change. I argue that presenting intellectually coherent interpretations of national political commitments, even if this presentation leads to massive backlash and is later determined to be morally incorrect and reprehensible, is a way the Supreme Court can lead to positive social change.

These five chapters together form a multifaceted analysis of one particular Supreme Court opinion's extra-judicial effect, and of the Court's role in American politics generally. It contributes to scholarship on Public Law, identifying and describing how the Court can transform politics outside the judicial system. It contributes to scholarship on American Political History and Development, showing how the Court can contribute to electoral politics and institutional change. By integrating data from political debate, campaigns, and elections, which illuminate the arguments and actions of elite and mass actors, this work presents an institutionally specific analysis of the Supreme Court's effect on the American political system. I find that when the Court affects politics outside of the judicial system, it still affects politics as a court. By remaking politics

on the part of individuals. My project builds upon such work, identifying the Supreme Court's contribution to such racial institutional frameworks.

along the lines of appellate constitutional argument, the Supreme Court has a substantial and unique effect on American politics.

Chapter 2: Judicialization of Political Conflict:

Evidence of *Brown*'s Effect in Newspaper Opinion

The United States Supreme Court, with its landmark racial integration case *Brown v. Board of Education*, stimulated a heated debate in the editorial pages of Southern newspapers. This debate encompassed arguments not just about the rightness or wrongness of the decision, but also included discussion of the roles of courts, states and law in the American constitutional system. This chapter analyzes Southern editorials and letters to the editor, and finds a sizable and substantively distinctive effect of *Brown* on discussion of race. I find that the Court stimulated an increase in the volume of discussion of racial issues, and reoriented that discussion of race to constitutional issues.

This dissertation presents a theory of “judicialization” that identifies and describes the effect of a Supreme Court opinion outside of the judicial system. My focus is on how a decision shapes and transforms debate, instead of how much compliance or support follows a decision. I am concerned most directly in this chapter with how and to what extent the Court can affect political debate, and how it affected Southern political debate with *Brown v. Board of Education* in particular. When the Court judicializes political conflict, it reshapes it in the form of the appellate legal process. Discussion in a given issue area that previously focused on the desirability or effectiveness of a given public policy is now also focused on issues of constitutionality. Participants in the debate, after the judicializing decision from the high court, argue about the constitutionality of public

policy, the proper role of governing entities like states and the federal government, and the proper theory used to interpret the Constitution.

A decision like *Brown* expands the scope of constitutional argument, involving more individual and institutional actors in debate over the constitutionality of an action of government. This debate is substantively similar to judicial review, but occurs in an expanded political environment. Appellate courts engage in two processes: statutory interpretation and judicial review. While statutory interpretation is concerned with whether a given piece of legislation is being interpreted and applied correctly, judicial review is the process of testing whether a given action of government is consistent with the Constitution. Judicial review is concerned with the Constitution as higher law, and what kind of legislation or execution of legislation is impermissible under that higher law.

When individual citizens, like the Alabamians cited above, debate the proper application of the Constitution to a particular public policy like school segregation, they are engaged in a kind of constitutional interpretation. This expanded judicial review debate lacks the concrete mechanism for finality that appellate courts possess. Supreme Court Justices debate over the proper application of judicial review, and they eventually vote for one interpretation or competing interpretation. The issuance of an opinion or opinions brings the discussion to a close, at least until the Justices decide to begin the process again. Debate outside the Court has no means of ending debate; discussion continues as long as there are people interested in discussing. The only means of achieving finality are elections, but only if those elections are contested on the same

issues as the judicialized public debate, and the elections produce a stable governing majority of representatives who are committed to a common constitutional and policy vision.

A major component of this judicialized political debate, stimulated but not controlled by a Supreme Court opinion, is the social/political doctrine. This chapter argues that when a Court opinion stimulates discussion, that discussion often takes the form of constitutional doctrine. These doctrinal arguments are legal in focus, but arise from core commitments of parts of society and politics. While white Southerners responded to *Brown* with an alternate constitutional vision, that vision was influenced and motivated by regional commitments to white supremacy and institutional structures that protected white supremacy. Thus that doctrine was social and political, as well as legal. The arguments that interested groups put forth in response to a Supreme Court opinion will articulate and reveal existing social/political doctrine. This doctrine will have the characteristics of constitutional doctrine, with theories of interpretation, identification of sacred higher law texts, conceptions of institutional design, and logical arguments. These doctrinal positions will support, oppose, or both support and oppose the Court opinion.

Here it is significant not merely that in the 1950s the Court stimulated increased opposition to school integration in the South. The form of argument used by Southern defenders was legal and constitutional, opposing the foundations of the Court's integration arguments. White Southern leaders did not merely disagree with Chief Justice Warren's assertion that separate institutions were inherently unequal, or that all

citizens were entitled to equal treatment from federal and state government. White Southerners presented a developed alternate constitutional doctrine, still working with the Constitution as the primary sacred text. Defenders of segregation added to their interpretive theory new sacred texts, like the Kentucky and Virginia Resolutions and the writings of John C. Calhoun. They offered a state-centered creation story to counter the Marshallian nationalist origins assumed for the Union by Warren. White southerners also grounded their thinking in the concept of interposition, which was at the core of their understanding of institutional design.

The presentation of social/political doctrine is an important component of the effect of a transformative Court opinion, because it allows for a kind of communication between the Court and its adversaries, in a type of discourse that is shaped by the arguments and institutional characteristics of the judiciary. The presentation of arguments in a doctrinal form by Court opponents allows for debate with groups in government and society who support the general issue position of the Court, but for different reasons or from different perspectives. This chapter makes use of newspaper opinion as a sample and reflection of the broader debate about race stimulated by Brown, and uses the theory of judicialization to analyze this data.

In this chapter I present newspaper opinion to demonstrate the effect of a Supreme Court decision on political debate in a public forum outside of the judicial system. Examining editorials and letters to the editor before and after Brown helps to identify whether the Court can affect broader politics, and the particular effect the Court can have on political debate. Identifying a particular effect of Brown challenges the

claim of Gerald Rosenberg in *The Hollow Hope* that review of the history of the Civil Rights Era “the extra-judicial effects thesis lacks evidence” (131). While Chapter 4 challenges Rosenberg’s claims that *Brown* did not make a meaningful contribution to the end of legal segregation in the South, and Chapter 5 challenges his conclusion that Courts are not effective actors in bringing about social change, this chapter is concerned with the more narrow question of whether or not Courts have an empirically measurable impact on politics outside of the judicial system.

Data and Methods

This chapter is an empirical examination of the Court’s indirect effect, testing whether the judicialization model discussed above describes discussion of race in the 1950s South. To provide data demonstrating *Brown*’s effect on political debate in the South, I examine every editorial or letter to the editor mentioning or discussing race or segregation in five Southern daily newspapers, 1950-1956. I examine two large metropolitan papers, *The Richmond News-Leader* and *The Birmingham News*. I also look at three smaller papers published in small cities, *The Bryan (TX) Eagle*, *The Florence (SC) Morning News*, and *The Meridian (MS) Daily Star*.

The newspaper editorial page is a useful data source because it provides a record of the debate over political issues, and that debate consists of arguments made by elite and mass political actors. Newspapers have several advantages over polls in an inquiry into *Brown*’s effect. Polls were much less frequent in the 1950s than in later eras, and demonstrate merely that white Southerners were opposed to the decision and supportive of segregation. Polls were more frequent in the 1960s, but by then many other important

race-related events had occurred, obscuring connections to *Brown*. Most importantly, polls would not present data about the *arguments* made by Southern elites and citizens. Editorials and letters to the editor by their very nature are argumentative, and show how people publicly discussed politics, and how that discussion changed over time.

Newspaper opinion data can support measures of what is best understood as “volunteered opinion,” the arguments made by individuals who choose to communicate their political views in public. Looking backward six decades, such opinion reflects what both political elites and individual citizens were discussing, and what kinds of arguments they were making to each other. This “volunteered” opinion has been used by scholars of politics to establish the nature and focus of politics and political debate at a particular time at the national level. Taeku Lee (2002) uses letters written to the President of the United States as an indicator of public opinion, arguing that such data avoids the problem of “non-attitudes,” and reflects the subject and direction of national political debate. Sarah Binder (2003) uses editorials from the *New York Times* to examine the content of policy debates from 1947 to 2000. She uses this data to identify the moments when gridlock or other forms of policy stalemate prevented legislation addressing major policy concerns from passing through Congress.

For my purposes here newspaper opinion is a reflection of political debate about race in Southern politics 1950-56. Race was an issue of concern before and after the *Brown* decision, with both editorials and letters making arguments about the nature and wisdom of segregation. An editorial or letter is a data point that indicates a decision by an individual or group to publicly state an opinion, and the content and structure of their

argument. I am not claiming that newspaper opinion is the primary, or most influential, site of Supreme Court impact. I am also not claiming that newspaper opinion is a perfect representation of what the entire regional population of the South spoke about, or a representation of all the arguments held by Southerners or the proportions in which Southerners held them. Newspaper opinion, however, is a representation of political debate, and in the time before large-scale consumption of television news a particularly important forum for political communication and debate. Newspaper opinion is also a documentary record of the content of politics at a given place at a given time.

In order to establish that shifts in the amount and type of newspaper opinion are not merely short-term effects of coverage of a Court decision, and to capture both the variety and depth of discussion of a given issue, I examine every editorial or letter to the editor that discusses race in the chosen newspapers in the chosen time period. Sampling particular periods of interest does have advantages, and I use a particular sampling strategy in Chapter 3 to examine *Brown*'s effect on black newspaper opinion. Including all editorials and letters that discuss race, and by omission all days of editorial opinion that do not contain discussion of race, I am able to establish the broader significance of a particular trend or type of argument. Including every day of editorial opinion does limit the number and type of newspapers under review (discussed below), and helps to better identify and describe the effect of an event like a Supreme Court decision on political debate.

I argue that *Brown* should increase the frequency and constitutional content of debate on southern editorial pages, and that the debate will take the form of an alternate

constitutional doctrine to that propounded by the Supreme Court. From my judicialization theory I derive three empirical implications, or expectations. First, I expect that southern newspapers will publish more editorials and letters about race and segregation after *Brown* is issued than before the decision, owing to increased attention to the issue of race once segregation is under perceived threat. Second, I expect that more editorials and letters to the editor concerning race will discuss constitutional issues after *Brown* than before the decision, with elite and mass political actors adopting the discourse and subject matter of constitutional interpretation. Third, I expect that the editorials and letters to the editor, taken together, will take a doctrinal position on race and segregation, and present constitutional arguments to support that position.

The evidence found for the third expectation, involving the substantive content of editorials and letters to the editor, is the core finding of this chapter. The first two quantitative expectations, however, support the qualitative argument in that they help to establish that judicialization is prevalent and significant. If discussion was reshaped by the Court into a form paralleling appellate courts, but such discussion was sparse and infrequent, then the content of discussion would not be crucial to an understanding of *Brown*'s effect. If editorials and letters making constitutional arguments made up only a small fraction of the increase in discussion of race, then judicialization would likewise not be very significant to a full understanding of *Brown*'s effect. Findings of frequency and constitutional focus, however, are evident and supportive of qualitative findings.

The first two expectations lend themselves to some basic descriptive statistics, and the third (while possibly not a hypothesis, but a theoretical proposition) requires

more interpretive evidence. The data set collected from Southern newspapers 1950-56 provides data supporting all three expectations. Editorials and letters to the editor speak to the concerns of this inquiry, in that they are public expressions of argumentative positions about race in the era of *Brown v. Board of Education*. As arguments they consist, with varying degrees of logic and complexity, of propositions supported by evidence. As arguments they can demonstrate the importance of constitutional concerns in discussion before and after the Supreme Court decisions.

The selection of data is not random, which limits claims about its representativeness of Southern or American opinion in the 1950s. This non-randomness, however, is also an asset for this inquiry. Writers of editorials and letters to the editor chose to express their opinions publicly, evidencing some degree of thought about the issue of race. Thus these data are unlikely to reflect what public opinion researchers call “non-attitudes,” statements that do not reflect well thought-out opinions, but merely on-the-spot reactions to posed questions. Writers of editorials and letters in this data set are likely to have been active and thoughtful participants in a national and regional conversation, and likely to shape discussion about race and segregation.⁵

I focus on debate in the South for both theoretical and practical reasons. While the eleven former confederate states were not the only states operating segregated school systems, the South was home to the largest concentration of blacks in America, and to the

⁵ Taeku Lee (2002) makes similar use of non-random data to analyze historical public opinion. He uses letters to the president as a proxy for informed public opinion, sampling 1 of every 20 letters 1948-1965. He argues that this data is more indicative of public opinion than survey responses, since letter data is created by individuals who have thought about an issue and formed an opinion, instead of being created by an interaction between an individual and a survey. The kind of effects that are the subject of my qualitative analysis would not be evident in a survey, but are evident in editorials and letters sent to newspapers.

most entrenched and pervasive form of racial segregation. Thus reaction to *Brown* was most pronounced in Southern states, even though only one of the five desegregation cases decided on May 17, 1954 was from a Southern state. *Brown* was regarded as a direct challenge to regional customs, traditions, and ways of life, and thus provoked a massive reaction. Focusing on the South allows me to examine reaction to the Supreme Court's decision in a relatively unfiltered form, since white Southern opposition to integration became dominant in many Southern states before other important events involving integration, like the 1957 integration of Little Rock High School in Arkansas and the protest movements of the 1960s. Also focusing mainly on Southern reactions allows me to assemble a data set of five newspapers from different parts of the South, making my sample a more representative regional sample, instead of having one Southern paper in a larger national data set.

The five-newspaper data set is representative of the 1950s South in several important ways. While all five papers are dailies, the Richmond and Birmingham are major metropolitan dailies, while the Florence, Meridian and Bryan papers are small city dailies. Having data from large and small papers captures both metropolitan and rural opinion. Small city papers are the best approximation of a rural paper for this inquiry, since most small-town papers are either weekly and would not provide enough data, and/or not available on microfilm. The five papers are also differentiated by sub-region,

with Birmingham, Meridian, Mississippi and Florence, South Carolina in the Deep South, and Richmond, Virginia and Bryan, Texas in the Peripheral South.⁶

The states served by the five papers examined here also differ in their immediate connection to the Supreme Court decision in 1954. Clarendon County in South Carolina was the origin of the *Briggs v. Elliott*, one of *Brown*'s companion cases. School districts in Virginia and Texas were the subject of desegregation orders issued by federal judges in 1956. Court-ordered integration did not come to Alabama and Mississippi for over a decade after *Brown* and *Brown II*, the 1955 implementation decision. The data set includes one paper, the *Richmond News-Leader*, which was a regional and national leader in forming a counter-argument to the Court on integration. Thus many letters are written in response to editorials in that paper about integration, and are therefore once-removed from *Brown* in the causal chain. The Richmond paper provides the strongest example of the judicialized debate, but the other four papers provide corroborating evidence. All these important differences among the five chosen newspapers make the data set as representative as possible, considering the labor required to sort through six and a half years of one newspaper, a period encompassing over 2000 days of coverage.⁷

⁶ The grouping of states into Deep and Peripheral South follows the usage of scholars of Southern Politics, for example Earl Black (1976). This distinction captures differences in the relative size of the black population in the two sub-regions, with Deep South states having much higher black populations. Richmond during the period under review was the site of a particularly vociferous backlash against integration, and the *News-Leader* was a leading voice supporting segregation. However, distinction between Deep and Peripheral Southern states is not intended to be a kind of index of "southernness" or support for segregation, and thus the nature of the Richmond reaction to *Brown* does not remove its identification as a Peripheral Southern city in a Peripheral Southern state.

⁷ The number of days of editorial opinion examined differs slightly from paper to paper, since some did not publish on Sunday, or did not have an editorial page on Sunday. Also some papers did not publish on certain holidays. The data set also does not include opinion from Feb. 1-15, 1953 of the *Richmond News-Leader*, due to a missing reel in the microfilm collection of the Center for Research Libraries.

The five newspapers are presented as a sample of Southern opinion and political argument, as reflected by the choice of individuals and groups to write editorials and letters and the content of their arguments. This newspaper data is not offered as a representative sample of the most influential published opinion in the South in the 1950s, or in the broader area of Civil Rights Era political change. The Richmond and Birmingham papers are clearly important in their own right, because of the regional significance of the Richmond paper and the later occurrence of important events in Birmingham and Alabama generally in the 1960s. They are not presented as the most important papers in the region, however. The *Atlanta Constitution*, *New Orleans Times-Picayune*, and the *News-Leader's* Richmond competitor the *Times-Dispatch* would be contenders for such distinction, if such influence was the criteria for selection.

Small papers were included in the analysis in order to provide a kind of demographic diversity, including debate from more rural areas. I could include three small papers instead of one large paper, because small papers publish less pages and usually less editorials and letters than large papers. Also the inclusion of the three small papers allows for more states and parts of the South to be analyzed, more so than the inclusion of one other large metropolitan newspaper. The three particular small newspapers under review were chosen primarily because the entirety of their issues 1950-56 were available by either interlibrary loan or, in the case of the Bryan, Texas paper, within driving distance of my location in Austin, Texas. Collections of all issues of small daily newspapers are scarce, since the two major repositories of microfilm archives, The Center for Research Libraries and The Library of Congress, contain mainly large

metropolitan papers from the 1950s. From the few available small papers, I selected Florence, Meridian and Bryan to achieve some measure of intra-regional diversity.

I chose the period from June 1, 1950 to Nov. 31, 1956 for reasons of substance and practicality. The foremost advantage of studying newspaper opinion in that time period is that *Brown* occurs in the middle of it, on May 17, 1954. Thus I can track change in response to Supreme Court action. Also *Brown* is the only major Supreme Court decision on race in the period, although there is some discussion of the 1950 *Sweatt v. Painter* decision, which ordered that state law schools be integrated, in the beginning of the period. Also the Little Rock crisis of 1957 is outside of the scope of the data set, as are all major direct action protest events except for the Montgomery bus boycott of 1955. The regional and temporal features of the five-newspaper data set allow for a focus on *Brown* as the event that caused increases in and transformation of the discussion of race.

I constructed this data set with a two-step sorting process. First I collected every editorial or letter to the editor that discussed race. An opinion piece was classified as discussing race if it used the words Negro or colored, or if it referred specifically to a particular race or ethnicity, or to racial minorities. Explicit discussion of “civil rights,” qualified as race discussion, as did any explicit or implicit mention of segregation or integration. Pieces using terms like FEPC, the acronym for the Fair Employment Practices Commission, were included if in context the writer was referring to the FEPC in its dealings with racial discrimination, since that federal agency dealt with other kinds of discrimination. Mentions of “the Supreme Court’s recent decision” were only classified as discussion of race if the context made clear that the decision discussed was *Brown* or

another race relations decision. This sorting collected 648 editorials and 791 editorials, taken from over 10,000 daily editions of the five newspapers. Table 1 lists the breakdown of editorials and letters by newspaper. All papers usually published several editorials, although the Richmond and Bryan papers occasionally published only one. The Bryan and Florence papers published letters so infrequently that they do not provide data useful for this analysis. The Meridian paper normally printed one letter to the editor, and the Richmond and Birmingham papers most days printed several, with Richmond occasionally printing more than a dozen.

I then coded the observations for the presence of one or more of four frames: constitutional, economic, religious and Cold War. Many scholars, notably Gamson (1992) have discussed the importance of frames as conceptual structures that condition the presentation and reception of information and argument. I argue that the Supreme Court discussed race using a constitutional frame, and Southerners responded with arguments presented through a constitutional frame. Editorials and letters also show use of other frames as well, although they are not as prevalent as the constitutional frame.

An opinion piece was coded as constitutional, or as using a constitutional frame, if it discussed one of the following issues or topics: the Supreme Court or other courts, the constitutionality of government actions, interpreting the Constitution, the structure of the political system, or the relationship between political institutions like states and the federal government. A piece was coded as using an economic frame if it discussed the national or local economy, employment, economic prosperity or growth, or the connection between race and economics. A piece was coded as religious if it discussed

race with reference to Christianity or another religion, supported an argument with reference to religious authority, or if the writer used phrases like “God help us” or “Almighty God” when discussing racial issues. A piece was coded as using a Cold War frame if the writer linked racial issues to the Soviet Union, communism or socialism. Some editorials and letters used more than one frame, and were coded as such.

Quantitative Findings

While the core of this chapter’s argument lies in the qualitative analysis of newspaper opinion as argumentative text, it is useful to first discuss quantitative findings. Descriptive and bivariate statistics help to support the judicialization theory, and to establish the generalizability of the patterns found in particular textual passages discussed below. The expression of a critique of *Brown v. Board of Education* expressed in Southern newspaper opinion after the decision is significant partly because it was part of an expanded discussion of race that followed the decision. This expansion is evident in quantitative analysis of newspaper editorials and letters in the aggregate.

Concerning frequency, my theory generates an expectation that there will be more editorials and letters to the editor that discuss race after *Brown* than before the decision. Analysis of the newspaper data follows the expected pattern. Table 2 presents the frequency of editorials before and after May of 1954.⁸ The five newspapers published 4.5 editorials per month before the decision, and 13.9 per month after, more than tripling

⁸ For purposes of quantitative analysis, the entire month of May 1954 is counted as after the Supreme Court decision, even though it was handed down on the 17th, and reported in newspapers on the 18th. When the data are analyzed by year, the years used begin with May of the calendar year. If classifying the entire month of May 1954 as after the decision would have any effect on the findings of this paper, it would be to

after May of 1954. Since the *Richmond News-Leader* devoted such a large part of its editorial pages to presentation of the constitutional argument against integration, devoting the entire editorial page to the theory of “interposition” for months in late 1955 and early 1956, I also analyzed the editorial data without the Virginia paper. Table 3 presents those results, showing an increase from 3.4 editorials per month before the decision to 9.5 per month after, nearly the same percentage increase as the full sample. Figure 1 shows the number of editorials by year, with years designated in distance from May of 1954. The fifth year, beginning with the month of the Supreme Court decision, shows the sharpest increase in discussion.⁹

Letters to the editor that discuss race also increase in number after *Brown*, and the increase is much larger than that observed in editorials. Table 4 shows these results, with an increase from 2.2 letters per month before the decision to 22.0 per month after, and Figure 2 shows the increase in letters by year. This tenfold increase is much larger than the threefold increase observed in editorials. The difference might be due to the fact that newspaper editorial writers, as members of the Southern elite, were likely aware of the potential threats to segregation, from both courts and Non-Southerners in the legislative and executive branches. Thus editorial writers began the 1950s with a substantial interest in racial issues, with *Brown* contributing to an increased focus in the middle of the

slightly reduce the observed impact of *Brown*. Since May 1-17 is such a small part of the time studied, any effect on analysis is minimal or nonexistent.

⁹ Both Figure 1, showing frequency of editorials, and Figure 2, showing frequency of letters, show the highest frequency in 1955 and 1956, not in 1954. This might be a result of a lagged effect of *Brown*, or an effect of *Brown II*, in June 1955. Two events, however, may explain the lagged increase. Discussion of race in Birmingham spiked in response to the attempt of a black student, Autherine Lucy, to enter the University of Alabama. In Virginia, discussion of race increased surrounding a special session of the state

decade. The decision was a greater shock to the mass of Southern whites, who could no longer count on their elected leaders to prevent a challenge to segregation coming from the national government.¹⁰

I also analyzed the letter to the editor data without the *Richmond News-Leader*, which provided over two-thirds of the letters. Table 5 presents those results. The sample with Richmond removed, which is mostly Birmingham letters, showed an increase from .69 letters per month before *Brown* to 5.9 letters per month after the decision. The increase was similar, but slightly smaller in percentage terms, than that observed in the full sample.

My second empirical expectation derived from my judicialization theory is that a larger percentage of editorials and letters to the editor will present constitutional arguments, or utilize constitutional frames, after the decision than before. To capture such an increase I calculate the percentage of editorials that are coded as constitutional for each year studied. I designate year periods from May of 1954 in order to capture the effect of *Brown*. Table 6 presents the results of this analysis, showing that in the fifth year studied constitutional editorials jumped from 19% to 45% of total editorials

legislature, and letters increased in response to a series of editorials, discussed below, that attempted to influence that special session. Both these events, however, were to a great extent results of *Brown*.

¹⁰ I must make one caveat to my treatment of letters to the editor as data indicative of Southern mass opinion in the 1950s. These letters are a clearly non-random sample not just because the writer had to decide to submit a letter, but also because a newspaper editor had to decide to print the letter. I have no way of knowing how many letters sent to the five newspapers in my sample were not printed, or whether the unprinted letters differ in substantively important ways from the printed letters. The printed letters, however, are from both supporters and opponents of the Supreme Court. Some make constitutional arguments, some do not. This diversity leads me to infer that editors were not excluding certain letters based on the argument of writers. Also the quantitative and qualitative findings of this chapter are robust enough to be valid even if there was some substantive filtration of letters. I am using the letter and editorial data to advance a particular empirical interpretation of *Brown*'s effect, not to paint an exactly representative picture of Southern public opinion in the 1950s.

discussing race. Table 7 presents a more focused analysis, with 23% of editorials before *Brown* making constitutional arguments, and 47% making constitutional arguments after. Table 8 presents the same analysis with data from the *Richmond News-Leader* removed, with a greater percentage increase, from 10% to 33%.

Letters to the editor show a parallel increase in the proportion of constitutional argumentation after *Brown*. Table 9 shows the percentage of constitutional letters by year, with years after May 1954 showing a higher percentage of letters making constitutional arguments. Table 10 shows that before *Brown* letters making constitutional arguments constituted 21% of the total, and after the decision were 55% of the total. Table 11 presents results for the sample without Richmond letters, showing an increase from 3% to 41%.

If *Brown* had the judicializing effect that I claim here, the constitutional frame should be more prevalent than other frames after the decision. Tables 12 and 13 show such a relationship, with use of constitutional frames outnumbering use of the other three frames after May of 1954. The only other frame that is significantly more common after the decision is the religious frame in the letters sample. While the constitutional frame is nearly three times as prevalent, the religious frame is used in 127 out of 683 letters after *Brown*. Much of this use of religious frames comes from the argument that segregation is ordained by God, a particular religious argument not often found in editorials. Such religious argument would likely be made by letter writers in response to any threat to segregation, not just one coming from the Supreme Court.

Quantitative analysis of newspaper opinion demonstrates that discussion of race increased sharply after *Brown*, and that discussion was often carried on using constitutional argument. The most interesting finding of this chapter, however, comes from textual analysis of editorials and letters to the editor. I find that the arguments made in response to *Brown* constitute an ongoing dialogue about the nature of the American constitutional system, and demonstrate how the Supreme Court stimulated non-judicial actors to engage in constitutional argument.

Textual Findings

The best and most coherent example of judicialized argument, and in particular social/political doctrine, is the editorial campaign waged on the editorial pages of the *Richmond News-Leader* in late 1955 and early 1956. Within the conflict over integration that later played out in elections and street protests, White southerners constructed an alternate constitutional vision. Written by James J. Kilpatrick, these writings were an explicit attempt to give legal and constitutional form to the reactionary movement of the White South. Powe identifies the editorials as key documents in the development of the Southern resistance. “The political and intellectual problem facing the South was how to explain to itself and the rest of the nation why defying the Supreme Court of the United States was okay” (Powe 58).

The *News-Leader* editorials present a constitutional interpretation constructed around the concept of interposition, in which a state “interposes” itself between its citizens and an unjust federal government action. Thus resistance to the Supreme Court decision was not unlawful, but “the highest possible example of fidelity to the compact”

(Nov. 23, 1955). According to Kilpatrick's understanding, the moral and legal high ground is occupied by Southern Whites, with their "reverence for law, and our obedience to constituted authority" (Nov. 22). This states' rights-centered theory was justified with reference not just to the nature of the ratification of the Constitution, but to other documents like Jefferson and Madison's Kentucky and Virginia Resolutions, and the writings of Calhoun. The Southern federalist theory is argued against the Court's nationalism; individual rights are confronted by sovereign power.

These editorials follow the form of what I call the production of social/political doctrine. Previously-existing regional values are publicly presented as a coherent doctrine that is grounded in legal and historical authority. An interpretation of the Constitution is supplemented by the inclusion of supportive sacred texts into the constitutional canon. A revised founding narrative is offered as the foundation for opposition to the Court's argument and directives. Thus the Court stimulates an intellectual process that replicates its own process, but using different inputs and ideas.

Not only do the arguments of the Richmond paper's Kilpatrick editorials follow the form of social/political doctrine, they were published in a form clearly meant to be taken as constitutional doctrine. The *News Leader* published them in a pamphlet called *Interposition*, and included as supporting materials like the Kentucky and Virginia Resolutions, writings by states' rights proponents like Calhoun, John Taylor of Caroline and Littleton Waller Tazewell, governor of South Carolina in the 1830s. These sacred texts were included along with resolutions and reports of the Virginia legislature in support of massive resistance to integration. This pamphlet includes all the components

of a social/political doctrine, and was produced in opposition to *Brown*, and to support the movement against the Court's position.

Kilpatrick wrote in 1962 an extended book version of the argument presented in his 1955-56 editorials, called *The Southern Case for School Segregation*. In the Introduction, he framed his project as the production of constitutional doctrine.

May it please the court: When this book was conceived, it was intended to be titled "U.S. v. the South: A Brief for the Defense," but it seemed a cumbersome title and the finished work is not, of course, a brief for the South in any lawyer's sense of the word. It is no more than an extended personal essay, presented in this form because the relationship that exists between the rest of the country and the South, in the area of race relations, often has the aspect of an adversary proceeding. We of the South see ourselves on the defensive, and we frequently find ourselves, as lawyers do, responding in terms of the law and the evidence. (Kilpatrick 1962).

This project, however, was not exclusively pursued by one newspaper over a few months, but by different newspapers and hundreds of letter writers across the South. Analysis of the five-newspaper data set finds that discussion of race shifted to a constitutional focus in the mid-1950s, and this shift was a result of *Brown v. Board of Education*.

Before moving to a detailed discussion of the argumentative content that followed *Brown*, it is important to note that the constitutional focus of Southern thinking about race was not new or unique, and that particular constitutional arguments made in defense of segregation had antecedents in the recent and earlier past of the South. The *News-Leader's* inclusion of supporting documents points to the importance of authors like Madison and Jefferson in the Kentucky and Virginia Resolutions, and of Calhoun in crafting the doctrine of Interposition. Other moments of Southern resistance to perceived Northern threats to regional autonomy, like the Civil War and Dixiecrat revolt of 1948,

were justified in constitutional terms. The Southern argument against integration in the 1950s is part of a history of states' rights argument that has antecedents in the period of the American Revolution and the Founding, and in the demarcation of British possessions in North America into colonial units like Virginia or Georgia. A search for the oldest roots of the Southern argument against federal power likely would stretch back to the construction of the concept of sovereignty in European history. The inquiry at hand need not make such a search, since the "judicialized" backlash under review is not presented as originated by the Supreme Court, but instead stimulated by the Court's action. Of interest here is how Southerners reacted to *Brown*, and how they chose to draw on their long political and ideological history to present their opposition to particular integrationist policies.

Before moving to a discussion of post-*Brown* judicialized dialogue, it is important to examine dialogue before the Supreme Court decision. Race in general, and segregation in particular, were often discussed as public policy before the decision, and not in terms of constitutionality. An illustrative example is this passage, from the editorial "Crime and the Deep South, III" from the *Richmond News-Leader* on May 1, 1953, discussing the relationship between high murder rates and large black populations in Southern cities:

The level of morality and respect for law indicated by these figures constitutes one of the principal reasons advanced by the South in defense of its historic public policy of racial segregation, though for some reason it is difficult to get our critics to recognize the facts. But these demonstrably high crime rates constitute more than that. They represent an economic loss and a social evil of the first magnitude and they justify thoughtful study by leaders of both races to determine how the picture may be improved.

Segregation is discussed as a desirable governmental policy, and resulting in reduction of crime. Argument about race does not here involve a vision of the constitutional system.

An editorial from the *Bryan (TX) Eagle*, titled “Public Housing,” published June 21, 1951, gives another example of discussion of race in terms of policy, not constitutionality:

In the opinion of citizens of Bryan who are generally familiar with conditions the need for such a project is greater than it was a decade or more ago. In that period there has been a heavy influx of Mexicans and many of these families are in deplorable condition from the point of housing. Many Negro families are in no better condition.

This editorial, the only one in the data set discussing a minority group other than blacks, is concerned with segregation as public policy. It advocates the expansion of public housing, and argues this expansion should occur within the framework of segregation. A lengthy example of pre-Brown argument on race comes from an editorial published July 19, 1951 in the *Florence Morning News*, under the title “The North could profit by studying methods of the South in handling of race riots.”

The South has never had a race riot equivalent to the one staged in Cicero, a suburb of Chicago, not even during the bitter Reconstruction days.

It should stop the mouths of the Northern agitators who like to give the impression that the South is the only section of the nation where relations between the races is not what is ought to be . . . we [the South] recognize the problem for what it is and set up conditions in which the two races can live side by side peaceably and profitably.

This defense of segregation is made on policy grounds, not grounds of constitutionality or in terms of the proper organization of the political system.

Non-constitutional, policy-focused arguments about race also were prevalent in letters to the editor before Brown. A letter signed “Meridian Home Owner” published Dec. 19, 1950 in the Meridian (MS) Star calls for more available housing for black citizens, arguing in terms of segregationist policy, not constitutionality:

Southern Negroes are not clamoring for anti-segregation. They want homes where they can have peace, quiet, sanitary surroundings, where they can rear their children properly and enjoy the friendship and companionship of their own kind. They want to become first-class, taxpaying, home-owning citizens. They are part and parcel of the community.

Such support for segregationist public policy was also evident in a letter from Henry L. Jones of Birmingham, Alabama, published in the Birmingham News under the title of “Another negro park, or improve present one” August 31, 1952: “There is no reason why the city cannot at least have a properly equipped park. There are a lot of places smaller than Birmingham which try to show that they are interested in their Negro population also.” This focus on policy, not constitutionality, was characteristic of discussion of race in the pre-Brown period.

The shock to the Southern social and political system that came from the high court in May of 1954 shifted the focus of Southern race debate to one of constitutionality. Segregation was still defended as desirable and effective public policy, but now the constitutional frame was most evident. Some of this constitutional argument concerned the practical questions raised by the Brown decision. The Birmingham News discussed issues of implementation in an editorial published on Dec. 13, 1954, titled “Alabama communities vary widely as to school segregation problem.”

Alabama in some respects has the gravest problem of all the states in regard to carrying out the decision of the U.S. Supreme Court that segregation should be abolished in public schools. No other state has a wider range in the proportions of the races which live in various counties . . . the school problems growing out of the court's de-segregation decision can best be regarded as local with methods and timing in dealing with the situation having regard for the make-up of population. The situation surely is one that the Supreme Court recognizes and will consider in making its order of last May 17 effective.

Many other editorials and letters engaged in discussion of the direct effect of the Court's ruling.

Others, particularly the Richmond News-Leader, presented highly theoretical and historically-grounded arguments for action that would preserve a States' Rights version of the constitutional system, a system which many white Southerners believed was ordained by the Founding and the Constitution. Kilpatrick's editorials reached a fever pitch with "Time to Fight It Out," a call for massive resistance by the state legislature, then meeting in special session:

We resist now, or we resist never. We surrender to the court effective control over our reserved powers, or we make a fight to preserve these powers. We lie down, piteous and pusillanimous, or we make a stand. We rely upon what great men have termed a State's 'right to interpose,' or we confess there is no right in a sovereign people effectively to protect their most vital institutions.

This is the showdown, gentlemen. We face the transcendent issue directly: Do we abandon this basic structure of our country and become docile subjects of Chief Justice Warren? Do we stand by the Constitution, or do we submit to judicial usurpation?

The doctrine of interposition was also supported by other Southern newspapers. The Florence Morning News argued on Jan. 8, 1956:

There is a serious question in the minds of the Southern states as to whether or not the Supreme Court exceeded the rights and authority given it in the Constitution.

Since the purity of the Constitution is at the heart of the test, Interposition would be an act to strengthen the Constitution. It would not challenge the Constitution.

Recognizing the right of the States to challenge a questionable act places the burden of proof properly on the shoulders of the Federal Government. It must win support for its position by making the Court's decree an acceptable amendment to the Constitution. The result, then, will bind all or none. As John Milton asked in a famous discussion of freedom, "What can be juster in a state than this?"

Interposition was the chosen doctrinal response of the editorial page of Richmond News-Leader, and was often presented approvingly by other Southern newspapers and letter-writers. The constitutional argumentation that responded to Brown, however, was not limited to presentation of this particular theory. Writers of editorials and letters offered many types of argument drawing on many different sources, and chose varied parts of the Supreme Court's explicit argument and implicit assumptions to criticize.

These editorials and letters to the editor collectively form a doctrinal response to the threat of integration because they possess particular characteristics that are found in doctrinal arguments about constitutionality and constitutional structure. The newspaper opinion under review discusses constitutionality of government decisions, historical precedent, the proper role and power of governing institutions, and proposed alteration of the constitutional order. Discussion of particular examples of these characteristics demonstrates the importance of the doctrinal component of the Southern response to Brown. Some of the following quotes are quite long, and some cover similar ground, but it is important here to present a sizable portion of the voluminous constitutional argument that followed Brown in fora that previously were not involved in constitutional argument to such a great extent.

Constitutionality of Government Action

In criticizing the Supreme Court's integration decision, Southerners expressed in newspaper opinion the same opposition to integration they had always expressed, and argued that segregation was a social good and integration will bring harm to society. But after *Brown*, editorials and letters to the editor added criticism of the Court's higher law position to their defense of segregation as government policy. Such direct criticism of how the Court was using the power of judicial review to strike down state laws is not surprising, but its existence does help establish the power of Court decisions to stimulate indirect effect.

These arguments about the constitutionality of the education policies of Southern states are interesting particularly because of what concerns they bring to the discussion of judicial review and constitutionality. R. R. Hazlett, Sr., of Petersburg, VA, writes in the *Richmond News-Leader* one May 24, 1954 about the proper application of the constitution to race relations, and ties his argument to the Cold War:

Personally, I cannot, by any stretch of the imagination, interpret the Fourteenth Amendment of the Constitution to mean equality socially, Equal rights and privilege—yes. As a matter of fact their decision is fraught with unseen dangers and far reaching and dangerous possibilities. For when you abolish States' rights you automatically embrace centralization of power, which is in reality communism.

Hazlett here expresses an interpretation of the Fourteenth Amendment narrower than that presented in *Brown*, but somewhat consistent with pre-1954 precedent on race. He also ties his constitutional argument to a broader argument about communism, here using both the Constitutional and Cold War frames as discussed above.

The importance of previous precedent was asserted by an editorial in the *News-Leader* on June 1, 1955:

For let this be said once more, in unmistakable language: In May of 1954, that inept fraternity of politicians and professors known as the United States Supreme Court chose to throw away the established law. These nine men repudiated the Constitution, spit upon the tenth amendment, and rewrote the fundamental law of this land to suit their own gauzy concepts of sociology. If it be said now that the South is flouting the law, let it be said to the high court: You taught us how.

This colorfully-argued passage contains several argumentative points that are of interest here. The *News-Leader* argues that previous precedent, here called “established law,” supports segregation. The paper also argues that the Tenth Amendment to the constitution protects state control of public education by “reserving” certain unenumerated powers to the states. Precedent and particular language of the constitution are presented as superior to social scientific evidence. Finally, in its last sentence the passage finds in *Brown* a kind of precedent for the the resistance to integration it conceptualized as interposition.

The editorial pages of other newspapers were sites of judicialized debate after *Brown*, with editorial and letter writers arguing that the Court has erred in its position on the constitutionality of state-run segregated school systems. The Meridian Star on May 23, 1956 printed quotes from then-presidential candidate Dwight Eisenhower supporting a states’ rights understanding of the constitution, and argued that such an understanding made integration ordered by federal courts unconstitutional:

We quote President Eisenhower to show further that the general conception of states’ rights is something no American should take lightly. Said Mr. Eisenhower in 1952:

“The Federal Government did not create the states of this Republic. The states created the Federal Government. The creation should not supersede the creator.

For if the states lose their meaning, our entire system of government loses its meaning, and the next step is the rise of the centralized national state, in which the seeds of autocracy can take root and grow.”

Historical Precedent

Critics of *Brown* sought justification in American history for their opposition to integration. This opposition was another important component of the Southern doctrinal response. Just as the justices of the Court consumed and made use of historical background on the drafting and passage of the Fourteenth Amendment in 1954, their Southern critics drew on the past to establish their chosen political actions as right and just. The *News-Leader* presented a detailed exposition of the many cases in which other states “interposed” themselves between their citizens and federal actions deemed unjust.

This discussion included not just the history of Southern resistance to federal influence, but also instances of Northern states resisting, including New England States concerning the War of 1812, Wisconsin concerning enforcement of federal fugitive slave law, and Iowa concerning grants of state land to railroad companies. On Nov. 28, 1955, the *News-Leader* argued that interposition had long been understood as a right states possessed inherently as part of the constitutional system of dual sovereignty:

We may note, in concluding this brief sketch of challenges to the Supreme Court’s authority, this aspect of the story: Georgia defied the court in the 1790s, refused to obey its orders, and remained in the Union as a loyal, and obedient State in every other regard. So, too, did Wisconsin 60 years later defy the court, refuse to obey its orders, and remain in the Union as a loyal and obedient State in every other regard. So, too did Iowa, in the 1870s and 1880s, defy the court, refuse to obey its orders, and remain in the Union as a loyal and obedient State in every other regard.

The Meridian, Mississippi newspaper also sought support for resistance to integration in American history, in this case referencing Andrew Jackson's defiance of Chief Justice John Marshall's ruling on the rights of Indian tribes:

Judges - like [the] rest of folks - should correct mistakes—Or reverse own unenforceable and/or erroneous findings. Again we return to the stand of good he-man Andy Jackson...grand old patron saint of real democracy. Senility has rules; let judges enforce senile ruling! Democratic "Old Hickory" has set historic pattern. And modern "us" may well wisely follow suit!

Resistance to federally-ordered integration is presented as not just good public policy, but as the proper functioning of the constitutional system, and supported by the action of Jackson in the 1830s.

Power of Governing Institutions

The Judicialized response to *Brown*, which consisted partly of doctrine-like arguments made on newspaper editorials pages, often concerns the proper extent of the power of governing institutions like Congress, state governments, and federal courts. The doctrine of states' rights, for example, is grounded in a theory of government structure and function that proposes an enhanced role for states and a limited one for the federal government. Many of the passages discussed above critique *Brown* as beyond the authority of federal courts, and passages discussed below that propose alterations to the constitutional structure also contain such critiques. It is useful here to examine an exchange in the *Birmingham News* that was begun by a letter from S.F. Moody of Birmingham on June 16, 1954 about the proper application of Article 4, Section 4 of the U.S. Constitution, the republican guarantee clause:

A state is not a republic in which the ruler or group of rulers, dedicated to rule at will, can truly tell the subjects that the sovereignty resides in himself or the group possessed with the powers to rule. Likewise, when the court directs social problems and abolishes traditions in the name of law when there is no law covering such matters, there is a complete denial of a republican form of government.

Moody's letter, arguing for a more restrained role for courts, drew a response from Charles M. Kidd of Birmingham, who argued on June 22 that

The Supreme Court of the United States is given complete power to exercise the law in connection with our Constitution, and concerning any action which will in the long run improve our country . . . Could we venture so far as to say that our republic is downfalling? Certainly not, but we could say and should say that our republic is even strengthened by this decision abolishing segregation.

This exchange is indicative of the kind of debate stimulated by the Supreme Court with its *Brown* decision, in particular a discussion of the proper extent of the power of federal courts. This kind of discussion, about the constitutional arguments for and against integration as well as policy arguments, increased in frequency after *Brown*.

Proposed Constitutional Revision

Brown v. Board of Education stimulated in some Southern citizens a desire to remake the constitutional system, and to express support for such a transformation in print. A common subject for suggestion was to alter how Supreme Court justices are chosen. R.R. Johnson of Blackstone, VA wrote in the *Richmond News-Leader* on June 10, 1955 that popular election would be a useful and just alternative to presidential appointment, which he likens to the leadership structure of communist nations:

That there are nine men in this country in whose appointment to office the voters have had no voice whatsoever, who assume that they are the law - that with a word or stroke of the pen they can negate any or all legislation, both State and Federal, enacted by chosen representatives of the people - is a fact that should

spur every citizen of the United States, regardless of race, into immediate action to put those fools in their respective places. If the Constitution is no more stable than are the minds of the present members of the Supreme Court, then God help us! That document should be re-written and make its members, as are the President and members of Congress, subject to election by the people. The founders of this nation didn't fight, bleed and die to establish a politburo to enslave men but rather to destroy all dictatorial authority and give to every man his inalienable right to freedom.

This passage also is an example of the use of other frames, in this case Religious and Cold War, and of the combination of historical argument with suggestions for changes to the constitution.

Along with selection by appointment, the lack of previous judicial experience by many of the Supreme Court justices provoked criticism and calls for revision. The Florence, South Carolina newspaper argued on July 3, 1955 that the South should lead a national drive to mandate previous judicial experience as a prerequisite for service on the high court:

Our section of the country has always led in the traditions of the Constitution and love of Constitutional law. The Court is getting away from the proper interpretation of the Constitution, and the South now has the proper motive and cue for action to bring the Court back into line. This could be done through a Constitutional Amendment that should be accepted to all. It would be acceptable because it would strengthen the integrity of the nation's tribunal.

Only those with experience and ability as lawyers, trial court judges and judges of appeals court should be nominated. Each man nominated should be held in high esteem by the members of this profession.

Our section will be able to do little about the decision that has been made; but it could lead in a movement of reform to protect what is left of the Constitution.

The Meridian, Mississippi newspaper, citing the advocacy of their junior senator, seconded this notion on September 23, 1956. Likely referring to the power of Congress to establish the federal court system, the editorial argues that:

Never before in history has respect for the United States Supreme Court reached such a low ebb. Certainly Congress should take the initiative in an effort to change the political plum nature of Supreme Court appointments, making judicial experience – as was first advocated by Mississippi Senator John Stennis – on a court of respective level, a prerequisite to service on the nation's highest bench, the Supreme Court.

Taken together, these many instances of constitutional argumentation constitute the production and presentation of Southern white social/political doctrine. That doctrine was not created by the Supreme Court; it was at times evident in editorials before May of 1954, and certainly had roots in the Founding and Civil War. But the Court's challenge to Southern social institutions and customs motivated the defenders of segregation to argue publicly in defense of their social system, and to make that argument in constitutional terms. Southern editorialists and writers of letters became advocates of a particular theory of constitutionality, and they advocated their position in the public forum of newspaper editorial pages.

This greater focus on constitutionality, and the increased frequency of discussion of race, are at minimum strongly associated and correlated with *Brown*. I argue that the timing and substantive orientation of this quantitative and qualitative shift in the Southern discussion of race support the claim that *Brown* caused the transformation. The decision had an effect outside of the judicial system, and that effect took the form of judicialization, with the Court remaking political conflict in a manner consistent with its institutional identity as a Court.

The broader consequences of *Brown* for Southern elections and American politics are the subject of Chapters 4 and 5, but it is useful here to point to one broader

implication of the Court's opinion. By stimulating increased debate on a given issue, and transforming debate on that issue, the Court can alter politics outside of the direct intended recipients of its decisions. This broad transformative role of the Court is significant to the scholarship of American Political Development, which is concerned with historical patterns and institutional change. The backlash against Brown activated in Southern whites a defense of what Rogers Smith and Desmond King have called the white supremacist political order in America. Since its decisions were presented as authoritative statements of what kind of government action is constitutionally permissible, the Supreme Court is particularly able to reveal and activate the values and commitments that infused Southern cultural and political institutions.

Table 1: Editorials and Letters to the Editor by Newspaper

	Number of Race Editorials, 1950-56	Number of Race Letters, 1950-56
<i>Richmond News-Leader</i>	188	572
<i>Birmingham News</i>	105	210
<i>Florence(SC) Morning News</i>	250	n/a
<i>Meridian (MS) Star</i>	72	8
<i>Bryan (TX) Eagle</i>	33	n/a
Total	648	791

Table 2: Frequency of editorials, before and after *Brown*

	Total Editorials	Editorials per month
# per month Before <i>Brown</i> (49 Months)	218	4.5
# per month After <i>Brown</i> (31 Months)	430	13.9

Table 3: Frequency of editorials, before and after *Brown*, without *Richmond News-Leader*

	Total Editorials	Editorials Per Month
# per month Before <i>Brown</i> (49 Months)	165	3.4
# per month After <i>Brown</i> (31 Months)	295	9.5

Table 4: Frequency of letters to the editor,
before and after *Brown*

	Total Letters	Letters Per Month
# per month Before <i>Brown</i> (49 Months)	107	2.2
# per month After <i>Brown</i> (31 Months)	683	22.0

Table 5: Frequency of letters to the editor, before and after *Brown*, without *Richmond News-Leader*

	Total Letters	Letters per month
# per month Before <i>Brown</i> (49 Months)	34	.69
# per month After <i>Brown</i> (31 Months)	184	5.9

Table 6: Race Editorials Using
Constitutional Frame by Year

Year	Const.	Total	% Const.
June 1950 – April 1951	26	69	38%
May 1951 – April 1952	12	57	22%
May 1952 – April 1953	2	38	5%
May 1953 – April 1954	10	52	19%
May 1954 – April 1955	47	105	45%
May 1955 – April 1956	93	189	49%
May 1956 – Nov 1956	63	136	46%
Total	253	648	39%

Table 7: Percent of Editorials that use Constitutional Frame, before and after *Brown*

	Constitutional Editorials	Total Editorials	Percent Constitutional
Before <i>Brown</i>	50	218	23%
After <i>Brown</i>	203	430	47%

Table 8: Percent of Editorials that use Constitutional Frame, before and after *Brown*, without *Richmond News-Leader*

	Constitutional Editorials	Total Editorials	Percent Constitutional
Before <i>Brown</i>	17	165	10%
After <i>Brown</i>	96	295	33%

Table 9: Race Letters to the Editor Using
Constitutional Frame by Year

Year	Const.	Total	% Const.
June 1950 – April 1951	1	21	5%
May 1951 – April 1952	4	24	2%
May 1952 – April 1953	5	17	29%
May 1953 – April 1954	13	32	41%
May 1954 – April 1955	100	173	58%
May 1955 – April 1956	215	381	56%
May 1956 – Nov 1956	63	129	49%
Total	401	790	51%

Note: The first year contains only 11 months,
and the last year only seven months

Table 10: Percent of Letters that use Constitutional Frame, before and after *Brown*

	Constitutional Editorials	Total Editorials	Percent Constitutional
Before <i>Brown</i>	23	107	21%
After <i>Brown</i>	378	683	55%

Table 11: Percent of Letters that use Constitutional Frame, before and after *Brown*, without *Richmond News-Leader*

	Constitutional Letters	Total Letters	Percent Constitutional
Before <i>Brown</i>	1	34	3%
After <i>Brown</i>	76	184	41%

Table 12: Number of Editorials that use Constitutional Frames,
Compared to Other Frames

	Constitutional	Economic	Religious	Cold War
Before <i>Brown</i>	50	12	4	5
After <i>Brown</i>	203	14	7	8

Table 13: Number of Letters to the Editor that use
Constitutional Frames, Compared to Other Frames

	Constitutional	Economic	Religious	Cold War
Before <i>Brown</i>	23	9	14	4
After <i>Brown</i>	378	10	127	38

Chapter 3: Race and *Brown*'s Effect: Discussion of Race in Black Newspapers

White Americans occupy much of the story of transformation from regionalized legal segregation before *Brown v. Board of Education* to a national legal commitment to equality in 1964. White politicians protected segregation both regionally and nationally before and after the Supreme Court outlawed public school segregation, and white politicians voted to make integration a national standard with the 1964 Civil Rights Act. While the previous and succeeding chapters are concerned with the role of *Brown* in this transformation of white politics and white-led government, this chapter is concerned with reaction to the Supreme Court decision among blacks. It continues the empirical focus of Chapter 2, examining political debate before and after *Brown*.

In this chapter I examine editorials from three African-American-oriented newspapers: *The Atlanta Daily World*, *The Birmingham World*, and *The Chicago Defender*. A sample of editorials from 1952, 1954 and 1956 illuminate the substance of argument about race and politics in the black¹¹ community in the 1950s, and the effect of *Brown* on that argument. It also shows similarities and differences between black and white reactions to the decision, and contributes to a broader understanding of the relationship between national political institutions and black politics.

¹¹ In order to maintain stylistic consistency, I use the term "black," to refer to Americans of African descent. I do not use "Negro" or "colored" because these terms have fallen out of general usage, and in contemporary language are often considered derogatory, unless as part of the name of an established organization like the National Association of Colored People or the United Negro College Fund. I use black to mean what Negro meant in the 1950s, and retain the word Negro in quotations. I use black instead of "African-American" only to be consistent, and whenever I use the term black it is meant to be synonymous with the contemporary usage of African-American. The use of the term black is not meant to implicate the political and social contestation that surrounded the movement of accepted terminology from Negro or colored to black, and then partially from black to African-American.

The first part of this chapter discusses quantitative findings from black newspapers in the 1950s, comparing attention to race and constitutional issues before and after the *Brown* decision. The second part examines the argumentative content presented in black newspaper editorials, and argues that it fits the broader judicialization pattern discussed in Chapters 1 and 2. The final section discusses how the black reaction to *Brown* fits into the pattern of dialectical change that I argue *Brown* contributed to in the Civil Rights era.

Data and Methods

This chapter, like Chapter 2, is concerned with assessing the empirical effect of a Supreme Court decision. I use opinion from black newspapers¹² to establish whether a Supreme Court decision has a measurable impact outside the judicial system. My analysis of editorials from three black newspapers in the 1950s finds the same type of judicialization effect as found in white-oriented newspaper of the same period. Editorials after *Brown* are more likely to make constitutional arguments, and to adopt a constitutional frame, than before *Brown*. The number of editorials concerned with race generally, however, does not increase after the Supreme Court decision. This lack of increase likely is a result of the importance of race to black newspaper editors before *Brown*, which made an increase in frequency less likely.

¹² I here use the term “black newspapers” to refer to newspapers that are chiefly oriented to the black community, and reach mainly black readers. The term should not be read to mean that the staff or readership of black newspapers was made up only of blacks, or that no blacks read mainly white-oriented newspapers like *The Birmingham News*. I focus on black newspapers as a group because of their similarity of orientation and readership.

My data source for this chapter is three black newspapers that published continuously in the period under review, 1950-56. I chose the *Atlanta Daily World*, the *Birmingham World*, and the *Chicago Defender*. These three papers were chosen partly because of availability. Complete collections of black newspapers from the 1950s are rare, and completeness is necessary for the type of analysis undertaken here. The two major sources of microfilm archival copies of newspapers, the Library of Congress and the Center for Research Libraries, have limited collections of black newspapers. Also many black newspapers publish only weekly, and like many small town white newspapers have infrequent editorial comment. The three papers only infrequently published letters to the editor, so I focus here on editorials.

The papers from Birmingham and Atlanta were chosen because of their location in the south, because they published either twice per week (Birmingham) or daily (Atlanta), and published editorials every issue. The *Defender* was chosen even though it is not a Southern paper, but based in Chicago. The *Defender* provided a third source for black newspaper data, expanding the data set. Including the *Defender* in this study also fits because of the connections between blacks across regions, and the connections between black politics nationally and Southern regional politics. The growing black population of Northern and Western states was mainly drawn from the South, and thus Northern blacks retained social and political connections to their ancestral region. The *Chicago Defender* helped to maintain those connections, circulating throughout the nation, in particular through the efforts of black porters serving Pullman rail sleeper cars.

By the early 1920s, northern Negro papers, sent by mail, bus, and train, had reached deep into the South. The *Chicago Defender*, with a circulation of more than 150,000, was selling more than two thirds of its copies outside Chicago.¹³

This southern connection and circulation supports the inclusion of the *Defender* in this study. Including the Chicago-based paper expands the data set beyond the only two Southern black newspapers that are available for the entirety of the period under review.

In analyzing black newspaper opinion, I utilized a sampling method chosen to identify data that could help illuminate the effect of *Brown*. A sampling method is necessary because of the prevalence of the discussion of race in black newspapers. While Southern white newspapers were concerned with racial issues, race was not the subject of the majority of editorials, and many issues had no discussion of race, segregation or civil rights at all. Black newspapers were the opposite, with almost every issue containing editorial coverage of race.

In order to gather a meaningful sample of black newspaper opinion 1950-56, I sampled time periods before and after the *Brown* decision was handed down. Instead of using a random sample, which might miss entirely the occurrence of important arguments about race or constitutional issues, I used a kind of purposive sampling method that drew upon known attributes of the data set. My strategy was to sample time periods before and after *Brown* that were substantially similar, and would likely show difference in argument if those differences existed. One obvious set of paired, similar time periods were the weeks immediately preceding the Supreme Court decision, and the weeks immediately after the decision. I sampled the two months before May 17, 1954, and the two after.

¹³ Roberts and Klibanoff 16.

I also took advantage of the occurrence of the presidential nominating conventions of the two major political parties, since *Brown* occurred between the elections of 1952 and 1956. The similarity of the two periods is increased because in both years the Republicans nominated Dwight Eisenhower, and the Democrats Adlai Stevenson. On the Democratic side two of Stevenson's major competitors, Estes Kefauver and Averell Harriman, ran both in 1952 and in 1956. The nominating conventions stimulated discussion and editorial comment in black newspapers. The substantive connection between electoral politics and race provided me two similar periods to sample, and their substantive similarities reduces the likelihood that differences over time are unrelated to *Brown*, and instead arise from particular characteristics of the two time periods.

I used the same coding procedure as in Chapter 2. I first selected all editorials in the chosen time period that mentioned race. Editorials were considered race editorials if they mentioned race or racial issues specifically, if they spoke of either Negro or colored people, or of white people. Editorials also were classified as race editorials if they discussed civil rights or civil rights public policy.

After selecting all race editorials, I then coded for the existence of a constitutional frame, or constitutional argument. I coded an editorial as constitutional if it mentioned the constitution, the Supreme Court, or discussed the power of particular parts of government or the relationship between parts of government.

Quantitative Findings

Just as in Chapter 3, I am interested in the change or lack of change that occurred in editorials discussing race after *Brown v. Board of Education* was decided on May 17, 1954. Coding editorials helps to establish whether attention to racial issues increased after the decision, and if discussion of constitutional issues was more prevalent within the post-decision race discussion. The three newspapers studied yield enough data about race to draw conclusions about the effect the Supreme Court had on discussion of race in media available to American blacks. The Birmingham, Atlanta, and Chicago newspapers yielded a total of 187 editorials, taken from six months of total coverage in 1952, 1954, and 1956. Table 14 presents the number of editorials by newspaper, with attention to race common in all three.

Unlike in the mainly white newspapers discussed in Chapter 2, the three black newspapers did not show an increase in discussion of racial issues after the *Brown* decision. The total number of editorials after the decision is actually slightly lower after the decision than before, dropping from 95 to 92. The fact that these totals are nearly identical shows a difference between black and white newspapers in the effect of *Brown*.

The lack of change in frequency in the black papers likely results from the greater focus of those newspapers on racial issues in general. As media that served a community of citizens who were discriminated against based on their race, black newspapers focused on race to a degree only rarely seen in white papers. *Brown* and other civil rights events like the direct action protests or the killing of Emmett Till were not necessary to stimulate sustained interest in race, as they were in white papers. In their study of news coverage of the Southern civil rights movement, Roberts and Klibanoff note that mainstream

white-oriented news organizations like the *New York Times* and CBS News began in the 1950s to cover issues that had long been the primary focus of black newspapers:

Long after white papers had turned to coverage of general-interest news, their Negro counterparts remained loud, clear instruments of protest, by turns educative and provocative. And for virtually all of their history into the 1950s, they had the race story all to themselves.¹⁴

This orientation toward coverage of and protest against racial discrimination motivated not only reporters, but editorial writers as well. Thus the Supreme Court did not stimulate a greater focus on race by black newspapers, but merely shifted that focus to more constitutional issues.

The lack of increase in race editorials after *Brown* may also be due to one particular component of this continuous focus on race. The various segregation cases making their way through the federal court system were often discussed on the editorial pages of black newspapers before the Court issued a decision in 1954. Thus there was significant discussion of the cases that would make up *Brown* in the days leading up to the decision's release.

The only one of the white papers that showed such a pre-*Brown* focus was the Florence, South Carolina *Morning News*, which focused on the Clarendon County, South Carolina desegregation case (which was one of the companion cases of the Topeka, Kansas case) as it worked its way through the federal court system. The Florence paper was the only one of the five examined in Chapter 3 that did not more than double its frequency of race editorials after the Supreme Court's decision, although the number did increase. Race was present in black newspapers constantly, in a manner only seen in

white papers after a major event or an event that occurred geographically close to the newspaper's coverage area.

The portion of race editorials that also discussed constitutional issues, however, increased after May 17, 1954. Table 15 shows that of the four periods analyzed, the two with the lowest percentages of constitutional discussion were before *Brown*, the two highest were after the decision. I also combined the two periods before the decision with the two periods after the decision. Since each group includes one period containing the major party nominating convention and one period from April – June 1954, comparison can reveal the pattern or lack of pattern in race discussion before and after the decision. The Birmingham, Atlanta, and Chicago papers used a constitutional frame in only 16% of editorials before the decision, and 46% after the Court ruled for integration in schools. With attention to constitutional issues nearly tripling after the decision, the data supports the claim that a major Supreme Court decision can have an effect on political debate consistent with the judicialization model discussed in previous chapters.

Textual Findings

While black newspaper editorial pages did not increase their focus on race after *Brown*, owing to the fact that an editorial on a racial issue appeared in nearly every edition, editorials did move to a more sustained discussion of constitutional issues implicated by racial discrimination. In this section I will first discuss the kinds of constitutional argument offered by black newspapers, and then discuss how the post-*Brown* discussion of race fits into the broader group empowerment narrative that ran throughout black

¹⁴ Roberts and Klibanoff 13.

editorial writing in the period. Several themes – a call for anti-discrimination action by whites, identifying non-discrimination with core American values, and support for implementing the Supreme Court’s integration decision – together form an argument for including non-discrimination in the broader constitutional order.

Much like the white newspapers analyzed in Chapter 2, the three black newspapers under review here discussed race, in most cases, without a constitutional frame before *Brown*. The struggle for racial equality was usually presented with reference to black empowerment, or in calls for non-discriminatory action by powerful whites. On August 30, 1952, the *Chicago Defender* addressed their black readers, arguing in favor of black voting:

Whether you know it or not, you are an important person. If you have registered and met any other requirements for voting, you are even more important. But if you actually cast your ballot on election day for the leaders you think are best qualified, you may be one of the most important persons in the world.

Such general reference to the possibilities for black participation in American politics and society were common in all three papers.

Such general arguments, not making reference to the constitution or constitutional issues, also were directed at the white politicians and business leaders that exercised power over the black community. Although there was some discussion of the 1950 *Sweatt v. Painter* and *Mclaurin v. Oklahoma* decisions, and some discussion of the *Brown* case as it advanced through the federal court system, editorials before May 17, 1954 tended to focus on the basic obligations of white leaders to avoid racist actions and demagoguery. The *Atlanta Daily World* was typical of this period in arguing “there is no place for race baiting, the waving of the red flag and the stirring up of passion to eclipse

the sunlight of decent reasoning” on May 7, 1954. Voting, voter registration, and the growing power of black voters were more common subjects than constitutional issues.

Brown v. Board of Education stimulated greater discussion of constitutional issues in black newspaper editorial pages. The quantitative results presented above might actually understate the effect of the Supreme Court case, since it stimulated some editorial discussion of constitutional issues before the May 17, 1954 date of issuance. An *Atlanta Daily World* editorial just before the decision demonstrates discussion of the constitutionality of government action, a core component of the judicialization model:

Besides the moral aspects of the issue we are concerned with the real fact of inequality which is in conflict with our national Constitution and the policies of the national government.

We think the time of legal segregation has expired and we think the great majority of the citizens can soon adjust themselves to a non-segregated situation if the politicians would just lead them in the right direction.

This argument that the racial inequality is unconstitutional is part of the general support for *Brown* discussed below.

Argument about race and the constitution in black newspaper editorials is also grounded in particular references to American history. In particular black papers incorporated the Supreme Court’s decision into a broader narrative of racial progress.

The *Atlanta Daily World* wrote just after the decision on May 21, 1954:

Let us make no mistake about the magnitude and meaning of the decision on last Monday. Apparently two of the three branches of our government came to the conclusion that the time had come for this nation to make another great step toward a fuller freedom for all men - of all colors - and not only those in this nation, but also for those in the world at large. Hence, what happened a few days ago.

Two great events in behalf of freedom have occurred since the founding of this nation. The first came on January 1, 1863 when the Emancipation Proclamation was issued. The other occurred Monday, May 17th, 1954.

The men who are responsible for these two events will live eternally in the hearts of freedom loving people everywhere.

This citation of historical warrant for the integration decision is the mirror image of references in white editorials to the states' rights precedents set by Jefferson, Madison, and Calhoun. Just as if they were lawyers engaged in constitutional appellate litigation, editorial writers at both black and white newspapers are acting as advocates for particular positions in a public argument. The editorial is analogous to a lawyer's brief or a Supreme Court *amicus curiae* brief.

Unlike James J. Kilpatrick writing in the *Richmond News-Leader*, the writer of a May 27, 1954 *Atlanta Daily World* editorial presented post-Civil War American history as a history of continuing contradiction, not as a glorious past that was interrupted by *Brown*. In discussing Georgia Governor Herman Talmadge's opposition to implementing desegregation, the *World* argued:

It is deplorable for a man to be seeking the highest office in the gift of the people of the state, in the face of having to swear to uphold and defend the Constitution of the United States, and then state a platform to do the opposite.

But this is in keeping with the pattern of inconsistency, as the practice of what he is running on has done for over 80 years

This argument fuses two themes present in 1950s black newspaper editorials: the existence of a fundamental right to equal treatment, and a hope that white politicians would recognize and protect that right.

The Atlanta paper uses the oath of office taken by Governor Talmadge as a way of highlighting its view of the proper role of states in the American constitutional system. Since, according to their equal rights understanding, the constitution protects equal rights for all races, the governor's oath to uphold and defend the constitution obligates him to protect the rights of Georgia's black citizens:

We are in the market for a governor for all the people. His qualifications as such must measure at least up to the oath prescribed for him to take and no man deserves consideration for an office upon a platform against the very oath that he expects to take if and when he is elected governor (May 27, 1954).

This integrationist and egalitarian constitutional vision was presented after the Supreme Court's decision, in hopes that both federal and state governments would bring to fruition the constitutional vision of American blacks.

One particular core component of the white newspapers' constitutional rebuttal to *Brown*, a call for some alteration in the constitution, is not present in the black newspaper editorial discussion. Such an absence is understandable, since black writers were getting what they wanted from the Supreme Court's exercise of judicial review. Southern whites who favored segregation were receiving unwanted authoritative constitutional interpretation from the Court, and thus were willing to discuss amending the constitution to prevent future decisions.

Brown v. Board of Education fit into a broader narrative of black progress and empowerment that was presented by editorials in black newspapers. The empowerment narrative contrasted the Supreme Court decisions and its correct understanding of the constitution with the recalcitrance of southern white politicians. On May 19, 1954, two

days after the decision, the Atlanta newspaper cast the segregationist leadership of Georgia as fighting against the inevitable victory of racial equality under the law:

The expressed reaction from some of the state's top officials, if persisted in, will make the inevitable change slower and more difficult. But wisdom demands that every responsible person should show tolerance and self-control in the present situation which has been created—not by the court's decision—but by the unfounded doctrines that have been delivered to the people by politicians who have profited from exploitation of the racial issue.

Unlike in white newspapers, where the defenders of the established regional racial order are presented as defenders of proper constitutional understanding, they are presented in black newspapers as self-interested actors who undermine the proper constitutional order.

Southern reactionaries were not the only prominent politicians that black newspapers judged to be acting inconsistently with the constitution. Northern and national politicians received criticisms as well. On August 25, 1956, during the Democratic Party convention, the *Chicago Defender* criticized the once and future Democratic presidential candidate:

Democratic leaders like Adlai Stevenson and others have scoffed at the possibility of a wholesale defection away from the party by Negro voters. This is relatively unimportant. The question is how long a party which hedges and subjects itself to all kinds of mental torture over the simple matter of giving every person the rights guaranteed them by the Constitution can enjoy the confidence of the people.

The argument for equality joins together black voting and a proper equal rights understanding of the constitution, in the hope that Democratic Party elected officials will uphold the rights found in the constitution.

Running throughout black newspaper editorials, both before and after *Brown*, is a hopeful vision of American politics and society organized around principles and norms of

equal justice under the law and equal treatment of all, irrespective of racial status. This hopeful, deterministic, and even teleological understanding of American politics is similar to the argument of Gunnar Myrdal's 1944 work *An American Dilemma*, which posited that an "American Creed" of liberty and equality contrasted with the contemporary reality of racial segregation. The *Chicago Defender* turned this creed or vision on white politicians, arguing that "Our law-givers cannot escape their responsibility to uphold the fundamental tenets of liberty and the pursuit of happiness about which prate so much, without endangering the whole process of democracy" on August 4, 1956.

The Supreme Court's integration decision of 1954 stood as an authoritative legal statement supporting the egalitarian vision of black editorialists. Much of their rhetorical effort afterward was focused on how to implement the decision, especially in the face of white opposition. The *Birmingham News*, on May 25, 1954, argued that a meeting of black community leaders could, and hopefully would, support the just-issued directive of the Court:

Next Sunday, May 30 leaders from Alabama's 67 counties are scheduled to meet in Montgomery for the purpose of formulating a program for first-class citizenship. This is a vital and timely conference.

Likely major attention will be given to building a program to implement the May 17 United States Supreme Court decision asserting the principle of all public schools for all. A formula for changing over should be earnestly sought.

To obey the decision is to apply it. Our leaders have the task of helping to prepare for the new look in education. Such a formula is not impossible of creation.

More than two years later, on July 28, 1956, the Birmingham newspaper saw the defeat of a civil rights bill in the Senate¹⁵

The irony of it is that people, living under a Constitution whose very ideals calls for equality, justice and equal opportunity for all, have to work and fight for those things already spelled out in simple terms in that Constitution. It becomes more ironical when, elected officials, through selfish interests, regionalism and prejudice wage a fight, spending tax money to defeat that which should be guaranteed every citizen.

The defeat of the bill leaves a strong feeling in the minds of Negro voters that serious consideration should be given as to the national party best qualified to implement Civil Rights legislations. It is obvious that the Southern Democratic bloc is responsible for the bill's recent defeat. This same bloc was responsible for implementation of the Southern Manifesto, a measure purposely designed to circumvent the U.S. Supreme Court's decision on public school education.

Black editorialists, writing at the end of the period under study, understood the need for involvement by elected officials to help implement the Supreme Court's integration decision.

Conclusion: A Black Perspective on White Backlash

Black editorialists showered the *Brown* decision with vociferous praise, and hailed it as a sign of positive change in race relations. Their idealistic positive reaction, however, was tempered by a realistic appraisal of the potential for opposition by Southern whites. The backlash that would dominate regional politics for much of the following decade was foreseen on the editorial pages of black newspapers. Soon after the decision, on May 20, 1954, the *Atlanta Daily World* warned of the danger that lay behind the comments of white politicians:

¹⁵ A weaker bill passed in 1957, but substantial action by Congress in furtherance of civil rights in the South would not come until the passage of the Civil Rights Act of 1964.

It is clear and conclusive that the strategy of those leading the opposition against the decision is to attempt to create a reaction so strong that it will have an intimidating effect on Negro citizens. We must by all means guard against such a shrewd maneuver.

Black editorialists were aware that implementation of the decision depended on white politicians acting against their normal patterns. The Atlanta paper, on May 28, 1954, seized on calls for calm by Governor James Byrnes of South Carolina:

The background of Governor Byrnes is strictly southern. The decision would involve all that is against the grange of his tradition and heritage; still he implores, "I earnestly urge all of our people, white and colored, to exercise restraint and preserve order."

It is notable that the writer focused on the comments of Byrnes, who was not supportive of black civil rights in his earlier career, and at the time was continuing an effort to counteract the Court's decision that he had been attempting since the Clarendon County desegregation case was first filed.

The hope for restraint in opposing the Supreme Court's decision, or even for support of it, by white politicians drove much of post-*Brown* discussion in black newspapers. The decision activated a doctrinal argument that was previously implicit or infrequently expressed in black newspaper editorials, that the constitution rightly interpreted forbade the Southern practice of racial segregation. The call for support for *Brown* by white politicians was the mirror image of white paper's call for local and national resistance to the Court's decision. On June 5, 1954, the *Defender* presented *Brown* as beginning a time of testing for the white politicians that maintained the racial monopoly on political power in the South:

The school decision and the others which have followed are a challenge to the political leadership of the South.

From the unintelligent manner in which many have reacted to the situation, it is our guess that they will be repudiated sooner than might otherwise have occurred.

The new era ushered in by these decisions calls for a leadership far different from that which has dominated the South in the past. If the present leaders can't meet the challenge they are doomed.

It's up to them.

Two years later, on June 16, 1956 , the Chicago paper foresaw the pattern of events that would, after the Birmingham and Selma demonstrations led to the 1964 Civil Rights Act and the 1965 Voting Rights Act, eventually bring about equal rights under the law. In discussing the reaction of white municipal politicians and the influence of the institutionalized backlash groups called Citizens Councils, presaged the kind of conflict that in Birmingham and Selma would spark a dialectical change process that would eventually lead to action by the other branches of the national government in support of the constitutional vision of *Brown*.

More than likely, the commissioners at the behest of the White Citizens Councils will come up with some kind of interposition to overrule the Federal District Court.

This kind of defiance is going to inevitably end in some law enforcement officer running head on into the law and leaving himself open for prosecution.

Perhaps then, it will be showdown time on who will prevail.

Table 14: Editorials in Three Black Newspapers,
June-July 1952, April 15-June 15 1954, June-July 1956

Newspaper	Number of Race Editorials, 1950-56
<i>Birmingham World</i>	39
<i>Atlanta Daily World</i>	76
<i>Chicago Defender</i>	72

Table 15: Race Editorials Using
Constitutional Frame by Time Period, Black Newspapers

Time Period	Total	Const.	% Const.
June-July 1952	71	7	10%
April 15- May 17 1954	24	8	33%
May 18 – June 15 1954	42	22	52%
June-July 1956	50	20	40%

Table 16: Race Editorials Using
Constitutional Frame Before and After *Brown*

Time Period	Total	Const.	% Const.
Pre-Brown	95	15	16%
Post Brown	92	42	46%

Chapter 4: The Supreme Court, White Backlash, and Southern Elections in the 1950s

This chapter examines the effect of *Brown* on Southern elections in the 1950s. After discussing the general pattern of Southern elections in the periods before and after *Brown*, I trace the decision's impact on the careers of four elected officials of national significance: James Byrnes of South Carolina, Orville Faubus of Arkansas, and George Wallace and Eugene (Bull) Connor of Alabama. The electoral and political success of these politicians, often because of their militant segregationist rhetoric and policies, shows the changed context of Southern politics after the Supreme Court's integration decision. The chapter closes by placing the backlash to *Brown* in the context of the process of social and political change that culminated in the 1964 Civil Rights Act and the 1965 Voting Rights Act.

Analysis of the careers of Southern politicians in the 1950s makes clear the significance of the backlash to *Brown* and *Brown II* in 1954 and 1955. The backlash to the Court decisions is not only significant because it was an attempt to thwart the integrationist will of the national high court that succeeded for over a decade, or because it dominated the rhetoric and results of Southern electoral campaigns. The reaction to *Brown* was particularly significant because it marked a sharp break from a progressive and comparatively racially tolerant period of Southern white politics in the early 1950s. The careers of politicians like Byrnes, Connor, Wallace, and Faubus illustrate the kind of campaigns and policy strategies that were successful in the post-*Brown* period, and the kinds of politicians who gained popular support as a result of backlash to the Court.

Focus on these four politicians demonstrates the particular effect backlash to the Court had upon Southern politics, and the contribution of that backlash to the pro-integration shifts of the 1960s. This chapter starts from an assumption that the national government became involved in the struggle for civil rights when prompted by the black civil rights movement. The most prominent and successful part of that movement used nonviolent action to highlight the legal inequities of Southern society. This process of national agenda-setting through nonviolent protest required the participation of segregationist politicians. The decisions of those politicians to oppose the movement for black civil rights with the coercive and violent powers of their offices were crucial to the change process that led to national legislation and executive branch action against legal segregation. This chapter explores the effect of the Supreme Court on this change process by identifying the role of *Brown* in the careers of particular Southern politicians. If the men who used the powers of their offices to symbolically and violently oppose integration gained those offices partly because of the backlash to *Brown*, then the decision contributed to social change in the area of civil rights. Such a finding would call into question Gerald Rosenberg's claim that the Supreme Court did little to bring about integration, but support his argument that courts can only bring about social change when the broader political context supports court-initiated change.

The chapter ends with an argument for broadening the understanding of Supreme Court impact to include participation in a dialectical change process. I argue that Rosenberg's skeptical view of Supreme Court impact does not take into account crucial specific characteristics of the backlash to court-mandated integration. Analysis of

Southern newspaper opinion in Chapters 2 and 3 demonstrates that even an unpopular decision like *Brown* that does not immediately bring compliance with its vision of the Constitution can bring about observable changes, in this case increasing the use of constitutional argumentative frames. *Brown* also brought a specific observable shift in electoral politics, helping to define the path of civil rights policy change.

Discussion of the careers of Wallace, Connor, Faubus and Byrnes identifies three significant components of the post-*Brown* backlash. The careers of Wallace and Connor show how state-level backlash could support or hinder candidates for office based on their connections to the politics of race. The rise of Faubus during and after the Little Rock crisis is an example of how backlash to court-ordered integration created a new opportunity structure for elected officials who were able to modify their politics to fit the new politics of militancy. The career of Byrnes, while less central to the narrative of civil rights in national politics, highlights the strength of Southern elites in national politics. The narrative analysis of the four politicians below focuses mainly on their campaigns and service in elected office before they came to prominence as opponents of civil rights for non-whites. This allows me to identify possible effects of the backlash to *Brown* on Southern politics, as expressed in election outcomes.

Southern Politics Before and After *Brown v. Board of Education*

While I chose these four politicians for discussion because of their prominence in the clashes of the period, they are representative examples of the electoral politics of the post-WWII South. The shift from relative moderation to militant segregationism after *Brown* and its progeny was the most common pattern in Southern elections of the period.

The backlash affected the career arcs of politicians differently based on their pre-1954 record in office and on the campaign trail, as well as the status of their political career when backlash to the Supreme Court hit their state.¹⁶ These four politicians, and most successful Southern politicians of the period, built a record in campaigns and office of opposition to integration. In the post-integration period that lies beyond the scope of this study, they also are representative of the politics of the South as the one-party Democratic dominance was fading. Faubus would unsuccessfully campaign for governor within the racially inclusive Democratic Party of Arkansas, losing comeback races for governor in 1972 and 1986. George Wallace ran for president once as an independent in 1968, and three times as a defender of racial conservatism in the Democratic presidential primaries. Meanwhile he dropped explicitly segregationist appeals from his gubernatorial campaigns and policies, getting enough black votes to prevent serious Republican challenge in his later races. Bull Connor left local politics when his position was eliminated in 1963 Birmingham government reorganization, but continued his opposition to integration of the national Democratic Party as National Committeeman and delegate to the Democratic National Convention. James Byrnes in his retirement supported Richard Nixon for president in 1960 and 1968, helping to deliver the state to the Republican.

¹⁶ Although the precise date of May 17, 1954 provides a useful break point to structure analysis of public communication, like the newspaper opinion discussed in Chapter 2, analysis of elections and behavior in office must take account of the more complex process by which the Court's decision activated a backlash in electoral politics. The impact on elections was tied closely to the pace of implementation of the 1954 ruling. Thus much of the backlash occurred after the 1955 implementation decision, or when a federal court ordered integration of a particular local public school or state university. Court-ordered integration became a real possibility in Alabama in 1956 with the attempt of Autherine Lucy to enter the University of Alabama, and backlash then began in earnest.

Before the Goldwater Republicanism of the 1960s brought two-party competition to the former confederacy, Southern electoral politics was conducted almost entirely within the confines of the Democratic Party. Southern whites supported the party of their father and grandfathers as a bulwark against hostile federal intervention that would challenge white supremacy in Southern states.¹⁷ Republican success in the region was limited to Appalachian mountain areas like Western North Carolina and Eastern Tennessee¹⁸ that were opposed to secession and civil war in the nineteenth century, and still voted for the GOP out of ancestral loyalties. In 1950 the Republican Party only elected two out of 106 House members from the eleven former Confederate states, both from East Tennessee. Conflict and disagreement over economic issues, which would be resolved in other parts of the country in the general election, were instead contested in Southern Democratic primaries.

At the time of *Brown v. Board of Education*, presidential voting in the South was the one exception to the Democratic dominance of campaigns and elections. Dwight Eisenhower carried four peripheral Southern states¹⁹ – Texas, Tennessee, Virginia and

¹⁷ Key argues that “there is one, and only one, real basis for southern unity: the Negro” (315).

¹⁸ Other parts of the South that did not support cotton agriculture or have a significant black population, like Northwestern Arkansas or Southwestern Virginia, would occasionally elect Republicans. These pockets of strength could not support statewide two-party competition. See Key pp. 277-97.

¹⁹ The terms Peripheral South and Deep South are taken from the literature on Southern politics to differentiate sub-groups within the region based on their demographic characteristics. The Deep South includes Louisiana, Mississippi, Alabama, Georgia and South Carolina, due to their large black populations and historical dependence on cotton agriculture. The Peripheral Southern States – Texas, Arkansas, Tennessee, Virginia, North Carolina and Florida – all have lower black populations and a more differentiated economic history. The term “Upper South” is sometimes used, but does not capture Florida. Some authors use “Rim South” to mean the same thing as Peripheral South (see Earl Black 1976, Black and Black 1987, Bartley and Graham 1975, Bass and DeVries 1976).

In this work the terms Peripheral South and Deep South refer to demographic groupings, not to classifications based on behavior or adherence to the norms of segregation. Consequently Virginia is not temporarily reclassified as a Deep South state because of its massive resistance to integration in the

Florida. This variation from the norm of solid Democratic voting in presidential elections was the second time in the twentieth century that a characteristic of one of the presidential candidates could capture electoral votes in the peripheral South, where maintenance of white supremacy through support for the Democratic Party was comparatively less important. Republican Herbert Hoover in 1924 took advantage of backlash to Democratic candidate Al Smith's Catholicism to win five Southern states. Similarly, Eisenhower's military background and role in the Allied victory in WWII helped to make the GOP candidate competitive in the region, while he was achieving a landslide victory in the rest of the country. The former general had very weak coattails, however, and was unable to alter the fundamental patterns of Southern voting. In 1952 Republicans only added five House seats to the two they already held from East Tennessee. Eisenhower's landslide elections in 1952 and 1956 resulted in no Republican Senators or Governors from the region.

The 1948 Dixiecrat revolt did result in Strom Thurmond winning the electoral votes of Louisiana, Mississippi, Alabama and South Carolina. The third party run likely cost the Truman-led Democratic ticket popular and electoral votes, and began the process of shifting of Deep Southern white votes that culminated in Barry Goldwater's sweep of the Deep South in 1964.²⁰ The Dixiecrat campaign is best understood as a protest within

immediate post-*Brown* period. Its intransigence, which departed from the pattern of moderation evident in other Peripheral Southern States in the pre-Little Rock period, shows the variation present within sub-groupings.

²⁰Joseph Lowndes argues that the shift of white southern voters to abandon the Democratic Party was connected to the deliberate actions of leaders of the Dixiecrat revolt who later worked to rhetorically link the northern liberal wing of the Democratic Party with black insurgents and violent crime.

the Democratic Party structure.²¹ Thurmond and Mississippi Governor Fielding Wright both remained in the Democratic Party after the 1948 presidential election, with Thurmond waiting until passage of the Civil Rights Act of 1964 to make his switch to the GOP. The Dixiecrat Party only won electoral votes in states where Thurmond “ran under the rooster,” as the designate Democratic Party nominee for president. The Rooster symbol was significant because of its long use to signify the Democratic line on Southern ballots, and as a voting cue for illiterate voters. The incumbent President Truman was not even on the ballot in Alabama, as Dixiecrats temporarily captured the state party apparatus and there existed no provision in state law for getting an independent candidate on the ballot.

Even if it could not always deliver all the region’s electoral votes to the presidential candidate chosen at the Democratic National Convention, the Southern Democratic Party in the early 1950s was uniformly successful at two electoral tasks: electing U.S. Senators and Congressmen who were committed to upholding white supremacy, and running a segregated white primary that was the only vehicle for election to statewide and most local offices. The Democratic Party was an institution that owed its monopoly status to support for white supremacy, but was tasked with producing elected officials who would produce public policies that dealt with all the other issues of politics and society. In the post-*Brown* area that was dominated by anti-integrationist backlash, maintaining white supremacy would push aside contestation on economic and

²¹ Key points out that Thurmond ran best in black-belt areas that were traditionally strongest in their support for Democratic presidential candidates. These areas, like the Delta region in Mississippi, had been least affected by the pro-Republican shift in southern voting in 1928 (329). See Ader 1955 for a

other issues. But in the period before the Supreme Court decision, the place of white supremacy in Southern elections was more complex. Southern members of Congress, especially Senators, would be elected and reelected so that they could prevent the passage of national legislation threatening Jim Crow segregation. While nearly unified on issues of race, the Southern congressional delegation was quite varied on other issues. Governors, however, were usually elected in the immediate pre-*Brown* period based on their appeals on economic issues.

Democratic primaries in the early 1950s for governor, and for other statewide and local offices, existed within a space protected from federal interference in matters of race. Several facets of the political system, while not overtly supportive of segregation, operated to protect the prerogatives of white southern citizens from possible integrationist federal legislation. For example, bicameralism benefitted an organized group of legislators who wanted to stop legislation favored by a majority of their colleagues. Southerners held positions of power in both houses, giving them several opportunities in the early and middle twentieth century to block even federal anti-lynching legislation.

In particular, seniority norms in Congress benefitted southern incumbents, regularly granting them positions as chairmen of standing committees.²² The structure of party competition after the 1896 realignment benefitted Southerners in the decades-long quest for a chairman's gavel. The electoral system in the United States, while operating under a single set of constitutional rules and structures, was actually two separate but

contemporaneous discussion of the failure of the Dixiecrat movement to fundamentally alter the Southern Democratic Party.

²² Key 346.

related systems that selected members of Congress. The Southern system would only produce Democratic senators, and almost entirely Democratic congressmen. Thus the main limitation on Southern members of Congress's length of service was their life expectancy.

Non-Southern members of Congress were sent to Washington from a very different system. The Democratic Party of the North was forced to compete with the Republican Party, and thus non-southern Democratic members of Congress could lose their seats. Even after the New Deal realignment of 1932, the GOP often gained several House and Senate seats, as it did in 1938, 1942, 1946, 1950, and 1952. Each of these elections eliminated several Northern Democratic congressmen and senators from the slow-moving quest for committee chairmanships, but left their Southern rivals in office. Even when the Northern Democratic Party recovered many of those seats in 1948 or 1954, the new arrivals would start at the back of the line behind the electorally bulletproof Southerners.

In the post-New Deal period in which Democrats would hold the majority for all but four years, Southern Democrats controlled more than their proportional share of chairmanships. At the time of *Brown* in 1954 two chairmen were of particular importance. Howard Smith of Virginia chaired the House Rules Committee, which set the terms by which a bill could be debated and voted on²³. James Eastland of Mississippi

²³ Shickler (2001) discusses how Smith gained his position on the committee as an afterthought after a leadership contest in 1933, as Smith was put on the committee as a concession prize for Sam Rayburn's unsuccessful faction. Smith eventually combined his seniority with alliances with conservative Republicans to block civil rights bills in the House.

chaired Senate Judiciary, which became the choke point for civil rights legislation.²⁴ Eastland, with backing from other Southerners on the committee and conservative Republican allies, kept civil rights bills from coming to the floor. He would often delay a bill by refusing to hold hearings on a proposed bill for months. When he would relent and hold hearings, he would often refuse to let pro-civil rights Senators speak, calling only on his allies.²⁵

These committee chairmanships would only slip from the grasp of the Southern defenders of segregation if Republicans gained control, which occurred in only two of the eleven Congresses before 1954. Even without the chairmen's gavels, Southerners possessed significant power positions. In the Senate they could filibuster bills by holding their 22 Senators together and gaining ten of the remaining 78 others. Often allies could be found in conservative Republicans who were either skeptical of increasing federal power or protective of the prerogatives of Senators in general.

The outsized influence of Southern senators and congressmen created a protective wall between the forces of racial liberalism and Jim Crow segregation. Characteristics of the national government like bicameralism, seniority in committee assignments, and the Senate filibuster created several veto points for a united and motivated minority grouping. Southerners could use these veto points to block federal civil rights legislation as long as they remained unified on matters of race. In the decades preceding 1954, they

²⁴ Branch (1998) notes that Eastland had killed 120 of 121 civil rights measures in the decade before the 1964 Act (p.267).

²⁵ Caro 875.

maintained this unity, preventing passage of anti-lynching legislation, a permanent federal Fair Employment Practices Commission, and any general civil rights legislation.

This unity of purpose and behavior on issues of race blunted any possible effects of *Brown v. Board of Education* on elections for U.S. Senator and member of Congress in the South. Incumbent Democrats had a record of opposing federal civil rights legislation that could buttress campaigns built on support for white supremacy. Southerners in the Capitol took advantage of the visibility of their offices to make clear their support for segregation, with the Southern Manifesto of 1956 the most prominent example. This argument for states' rights and continued support for the *Plessy v. Ferguson* precedent was signed by all but three Southern Senators.²⁶

Evidence of a backlash to *Brown* would thus likely not appear in Southern congressional elections. A white voter motivated by anger at the Supreme Court and fear of national government intervention in Southern affairs would likely vote after *Brown* as he or she would before the 1954 decision. Voters would reelect their incumbent segregationist Democratic member of Congress, sending them back to Washington to accumulate seniority and oppose civil rights measures.²⁷

Elections for governor, however, do yield evidence about the nature of the post-*Brown* transformation in the regional electoral environment. Most Southern states had

²⁶ Senators Estes Kefauver and Albert Gore, both from relatively moderate Tennessee, did not sign the Southern Manifesto. The only other senator not to sign was Majority Leader Lyndon Johnson, who was not asked to sign in order to preserve his future viability as a presidential candidate.

²⁷ In the mid-1950s the Republican Party was not yet a viable vehicle for white backlash against civil rights policies emanating from Washington, even though Eisenhower did win several Southern states and fifteen unpledged presidential electors went to segregationist Harry Byrd instead of John Kennedy in 1960. The pro-civil rights actions of Kennedy and Johnson led to the beginning of white backlash Republican voting,

term limits, in some cases like Virginia, South Carolina, Mississippi and Alabama prohibiting consecutive terms. Alabama, which is discussed in more detail below, provides particularly fertile ground for analysis of a possible Supreme Court effect on gubernatorial elections. The Alabama Constitution then prohibited consecutive gubernatorial terms, but allowed former governors to run again after a term out of office. As a result politicians like George Wallace and Jim Folsom had long careers with multiple runs for governor, demonstrating the shifts in state voting and how politicians adapted to these shifts over time. In the period beginning in 1946 and ending in 1962, Alabama had five men elected governor in six elections. The moderate progressive Folsom ran three times, and Wallace ran twice, with each losing one election. The four spots in Democratic Party gubernatorial runoffs that were not occupied by either Folsom or Wallace were occupied by four different men (Folsom won a majority in the first primary round in 1954 and avoided a runoff). During this period Alabama had the same two U.S. Senators, Lister Hill and John Sparkman, both gaining reelection with a record of racial conservatism and economic liberalism. Gubernatorial elections in Alabama, and across the South, exhibited more variation.

Earl Black, in a book-length study of gubernatorial elections in the South from the 1950s through the 1970s, finds that in the elections immediately preceding Supreme Court action, race was not a central issue in campaigns for the highest statewide office. In the years preceding the *Brown* decision, when racial segregation could be understood by white politicians as an intrinsic, seemingly immutable characteristic of southern life,

with the near-defeat of Senator Lister Hill in Alabama in 1962 and the election of several Republican

references to race in political campaign were sporadic and commonly pertained to occurrences outside the South. Black finds that events of the previous decade that had seemed initially to threaten segregation, like establishment of a Federal Employment Practices Commission, the *Smith v. Alright* decision abolishing the white primary, or support for civil rights by President Harry Truman and the convention that nominated him in 1948, “had largely dissipated in state elections by 1950, and from then until 1954 campaigning southern politicians gave relatively little attention to racial matters.”²⁸

Black argues that “racial segregation was, at most, a secondary concern” in elections where most candidates were best described as moderate segregationists. These seekers of high office would express satisfaction with established regional social patterns, and treat race as a settled issue. Black finds that in the period just before *Brown* (1950-1953), 95 out of 100 major candidates for governor in the former confederate states were moderate segregationists. The five remaining candidates were strong segregationists. Owing to the general acceptance of Jim Crow norms by the overwhelmingly white southern electorate and the white politicians it elected, no major candidates were classified as Non-Segregationists. Fourteen of the sixteen elections were won by moderate segregationists.²⁹

Black finds that the most important axis of conflict was economic. Ninety percent of candidates were classified as either marginalist or redistributive on economic issues, with the proper balance of taxation and public education spending as the primary issue set

congressmen from Deep South states in 1964.

²⁸ Earl Black 29.

²⁹ Ibid 30-31.

before the electorate. Marginalists called for marginal improvements in state education, and holding taxation to existing levels. Redistributive called for increased taxation to fund improvements in public education, which they argued was necessary to provide equal opportunity to those of modest means. The most common successful type of candidate was a moderate segregationist marginalist.³⁰

Strong segregationists with unadulterated racist appeals were rare. In the 1950 Alabama first Democratic primary, militant segregationist candidates State Senator Bruce Henderson and Birmingham Public Safety Commissioner Bull Connor finished a distant fourth and sixth. Even in Mississippi, the most segregationist candidate finished fifth in the 1951 gubernatorial first primary. Newspaper editor Mary Cain was unable to get traction with the voters with her warnings about “smart alecks in Washington who think they can improve on God’s plan of different races by making us abolish segregation and absorb the negro into the white.”³¹ Even in the Deep South, elections for governor were not decided merely by which candidate could most vociferously support segregation.

This relative moderation in Southern gubernatorial campaigns fit with some of the important characteristics of American national politics in the twentieth century. Segregation need not define the tenor of gubernatorial campaigns and records in office because national policies on race were to a great extent defined by Southern members of Congress. With state legislative and executive offices always in the hands of whites committed to maintaining Jim Crow, a threat to white supremacy had to come from Washington. But the dispersal of power and the multiplicity of veto players in the

³⁰Ibid 32-33.

national government provided Southern Senators and congressmen significant power to stop legislation. The power of Southerners in Congress was not unlimited; they would have had trouble passing any legislation imposing facets of the Jim Crow system on the nation. But the power of the region's delegation on Capitol Hill, while never making up a majority of even the Democratic caucus, was sufficient to block any legislation that would threaten the existing organization of Southern society. This power that was so effective in blocking legislation³² was clearly insufficient to block the court-mandated integration that began in 1954.³³

James Byrnes: The Changing Defense of Southern Autonomy

Politicians like George Wallace and Orville Faubus adapted their policies and campaign positions to succeed in this new context, in which militant resistance to federal government action dominated statewide elections and the policies supported by southern governors. Their style and actions in office stand as a contrast to the pre-*Brown* career of James Byrnes, who was governor of South Carolina when the *Brown* decision was decided. While holding elected and appointed positions in federal and state office, Byrnes was able to exert power and influence on behalf of the white supremacist racial order, but often in cooperation with non-southern leaders.

³¹Ibid 34.

³² Whittington points out that the backlash to *Brown* in the South was in contrast to support for the decision by non-southern elites, who had met with failure in attempts to pass strong Civil Rights legislation: "Entrenched and disproportionately powerful southern conservatives had gridlocked Congress. The Court became the alternative" (134).

³³ Murphy (1962) discusses the attempt to pass jurisdiction-stripping legislation in 1957 and 1958. Southern Democrats joined with conservative Republicans to attempt passage of a bill responding to Supreme Court decisions involving free speech and anti-communism. This effort was a test case for a planned push to limit the court's appellate jurisdiction in areas of civil rights, but even then was unsuccessful in the Senate.

The career of James Byrnes demonstrates the changes in southern politics that *Brown* brought about. In particular his career shows the opportunities that were available for Southern politicians, and the continuing viability of the Southern project of maintaining support for segregation in national government. His career, which began in the early twentieth century and overlaps with the careers of Wallace and Faubus, highlights the power of the white supremacist order. The changes brought on by the Supreme Court caused him to move from the politics of influence to the politics of resistance.

James Byrnes is not a prominent figure in the history of the Civil Rights Movement like Wallace, Connor and Faubus. Although a key figure in elected office for much of the early and middle twentieth century, Byrnes is probably best remembered for three unelected positions, as a Supreme Court Justice for one uneventful term, and as Director of the Economic Stabilization Office, often called “Assistant President,” for Franklin Roosevelt during WWII, and as Secretary of State for Harry Truman. His career, with service in all three branches of the national government and as governor of South Carolina, demonstrates the influence of Southerners on the national government, and the diminished possibilities for resistance after *Brown*.

James Byrnes’s one term as governor from 1951-1955 came at the end of a career mainly focused on national politics. He was a rare former Senator to serve as governor of a Southern state, since Senators from the region would normally keep their seats and

accumulate power and seniority.³⁴ Elected to the U.S. House in 1910, Byrnes was unsuccessful in his first run for the Senate in 1924, losing in the Democratic runoff primary to the militant segregationist Cole Blease. Byrnes's refusal of an offer of membership by the Ku Klux Klan, at the height of the group's power in state and national politics, furnished ammunition to Blease.³⁵ The refusal of Byrnes to join the Klan in 1924 contrasts with the actions of the much more progressive Hugo Black, who won a senate seat from Alabama that year and went on to support racial equality on the Supreme Court. Byrnes came back to defeat Blease in 1930 with an economics-focused campaign that connected with voters at the beginning of the Great Depression. Blease unsuccessfully countered with what he termed a "nigger and liquor" campaign.³⁶

Although Byrnes won election to the Senate as the more moderate candidate on racial issues, in Washington he was a strong defender of the ability of the South to maintain a segregated social system. While filibustering antilynching legislation in 1938, he argued that the bill should be retitled "a bill to arouse ill-feeling between the sections, inspire race hatred in the South, and destroy the Democratic Party."³⁷ That Byrnes could take such a stand while maintaining close relations with liberal president Franklin Roosevelt, which made him what Earl and Merle Black called "the South's most

³⁴ Usually the pattern would be reversed, with a long senate career following service as governor. When Byrnes was elected governor seven of the twenty-two senators from the South had previously served as governor, including Burnet Maybank and Olin Johnston of South Carolina.

³⁵ Robertson 95.

³⁶ Ibid 113

³⁷ Black and Black 2003 p. 53

influential Democratic senator” of the time, is evidence of the influence of the South within the New Deal Democratic Party.³⁸

The connection to Franklin Roosevelt, which was cemented as Byrnes lined up support for Roosevelt at the 1932 Democratic Convention,³⁹ made James Byrnes a national political figure in the 1940s and 1950s. In a Senate where the power of Majority Leader Joseph Robinson was weak and limited by the power and prerogatives of individual senators, Byrnes would often shepherd New Deal legislation through the chamber.⁴⁰ He also exerted power in Washington for local purposes, successfully pushing the Santee-Cooper dam project through Congress, bringing hydroelectric power to much of South Carolina. Byrnes still maintained, however, independence from the administration, opposing the Court-packing plan in 1937.⁴¹ When FDR attempted to purge conservative Democratic opponents of New Deal measures in 1938 primaries, Byrnes supported his South Carolina colleague “Cotton Ed” Smith against an administration-backed challenger.⁴²

The ascent of Byrnes in the Senate was cut short when President Roosevelt put him on the Supreme Court, and then entrusted him with management of much of

³⁸ The service of Byrnes as South Carolina Governor was during a period of declining influence within the party and increasing influence for blacks and northern liberals. While Byrnes would serve as Truman’s Secretary of State from 1945-47, John F. Kennedy refrained from nominating the comparatively racially tolerant J. William Fulbright to the same post because he signed the Southern Manifesto (Halberstam 29-30, Woods 258)

³⁹ Ibid 137-141. Byrnes would provide crucial aid to Roosevelt by keeping in line the wavering Mississippi delegation at a point after three deadlocked ballots when a defection could have stopped Roosevelt’s momentum. Byrnes also personally delivered campaign contributions to Roosevelt from his longtime ally financier Bernard Baruch.

⁴⁰ Caro 359

⁴¹ Robertson 260

⁴² Ibid 271-75

domestic wartime policy as “assistant president.” This evidence of Roosevelt’s favor, combined with the support of his fellow Southerners, made Byrnes a viable contender for the vice presidential nomination in 1944. FDR’s likely reelection, combined with his failing health, meant a spot on the ticket would probably lead to the presidency. Although southerners and other conservatives were able to pressure Roosevelt to dump the liberal Henry Wallace, their choice of Byrnes was blocked by northern liberals and big-city bosses worried about losing black votes.⁴³ Truman later appointed Byrnes Secretary of State, but the South Carolinian resigned after disagreements with the president over his authority and the direction of policy.⁴⁴

As a Southerner working within the New Deal Democratic coalition, Byrnes conceived of his work as a twentieth-century version of that of the nineteenth-century politician and political philosopher John C. Calhoun. The earlier South Carolina Senator, and Vice President and Secretary of War, argued for a regional minority veto over national government action. Byrnes saw his work building cross-regional coalitions in the Senate as part of this project.⁴⁵

The return of James Byrnes to South Carolina politics as governor in 1950 was an admission that the national project of creating a Calhounian concurrent majority for the South had failed on several fronts. While Byrnes and his Southern allies were able to block renomination of the unpalatable Henry Wallace as vice president, they were unable to secure the nomination for Byrnes. Wallace’s replacement as vice president, Harry

⁴³ Klarman 178

⁴⁴ Robertson 488-90

⁴⁵ Ibid 501

Truman, proved a major disappointment to Southerners. As president Truman desegregated the Armed Forces and established a commission to identify civil rights violations in the South. His popularity with northern liberals, big-city political bosses and organized labor, combined with the change of the proportion of delegates needed to win from two-thirds to a majority,⁴⁶ made futile any attempt by the South to deny Truman nomination in 1948.

The return to state politics in 1950 by Byrnes refocused the fight for Southern autonomy on the power of state governments. While Senate Democrats would be able to forestall meaningful national civil rights legislation for another fourteen years, the Supreme Court was considering four challenges to the separate-but-equal standard of *Plessy v. Ferguson*. Byrnes, anticipating an era in which Southern states would have to alter their racial policies in response to federal court decisions, returned to South Carolina to shepherd a massive improvement in the state's black educational system to comply with the "equal" part of separate-but-equal. He ran a moderate segregationist campaign⁴⁷ and cast equalization of black and white schools as both prudent and ethical, stating "to meet this situation we are forced to do what we should have been doing for the last fifty years."⁴⁸ Byrnes was attempting use state public policy to protect segregation from national government interference, complying with friendly Supreme Court precedent. *Brown* and *Brown II* precluded this strategy, foreclosing another of Byrnes's attempts to institute a Calhounian concurrent majority for the South. He then joined

⁴⁶ The change was instituted on the wished of Byrnes's ally and benefactor Franklin Roosevelt.

⁴⁷ Earl Black 33

⁴⁸ Black and Black 1987 p. 91

other Southern governors in using state resources to obstruct, rather than comply with, federal court decision on civil rights.

Brown v. Board of Education constituted a challenge to southern segregated institutions that emerged from an institution much less subject to Southern influence than the U.S. Senate, Democratic Party or even the presidency. Even if Byrnes had remained on the Court, he would have merely been able to prevent the decision from being unanimous. A regional minority of eleven states with less than a quarter of votes in the Senate could block the national government from producing effective desegregation policy. The white southern Democratic Primary could send experienced politicians like Byrnes, Richard Russell of Georgia and Harry Byrd of Virginia to accumulate seniority and influence. Committee chairmanships granted power to the southern minority when the Democrats were in power, and the filibuster empowered southerners no matter who controlled the chamber. The Court was a majoritarian institution, and the only Southerners on the Court were the liberal civil rights supporter Hugo Black and moderate Truman appointee Tom Clark, had voted to make *Brown* unanimous.⁴⁹ If Byrnes had been Roosevelt's last vice president and succeeded to the office, he might have used the four appointments Truman made to the Court to buttress support for *Plessy*. Roosevelt and Truman appointees had put a Supreme Court majority out of reach. Richard Russell's inability to seriously contend in a weak open field for the Democratic

⁴⁹Stanley Reed was from Kentucky, which is sometimes classified as a Southern state. If Black, Clark, and Reed are combined with Sherman Minton from Indiana and Harold Burton from Ohio, a majority of the Supreme Court in 1954 came from states with some legally segregated schools. The fact that such a group unanimously voted to overturn *Plessy* was a sign that the Court in 1954 was a fundamentally different institution than Congress, where supporters of segregation could exert significant influence.

nomination for president in 1952 made clear that a southerner strongly supportive of Jim Crow could not be elected to the presidency.⁵⁰

Byrnes had anticipated that when the Supreme Court took the *Briggs v. Elliot* case from Clarendon County, South Carolina, a challenge to segregation was forthcoming that could not be blocked by Southern-influenced institutions. He retreated to another line of defense within the national political system: Supreme Court precedent. Byrnes marshaled the resources of South Carolina state government to produce public policy that could be cited as evidence of separate becoming equal in the arguments John W. Davis was presenting in Washington. In *The Rise of Massive Resistance*, Numan Bartley characterizes Byrnes's actions as governor as an attempt to carve out a new zone of autonomy for the South in national politics:

The restoration of states' rights and southern rights, Byrnes seemed to feel, required three things: a broader concept of state responsibility, particularly in regard to the Negro; an adamant stand by individual states against further federal encroachments, especially in matters pertaining to civil rights and school segregation; and cooperative action by the states to counter centralization of authority in Washington.⁵¹

Bringing the poorly funded black school system up to resource equality with white schools in South Carolina would require a new funding stream, so Byrnes convinced a skeptical legislature to institute a three percent sales tax. Byrnes hired the nationally-prominent lawyer and former Democratic presidential candidate John W. Davis to defend South Carolina before the Supreme Court, and sent him to Washington with a state plan

⁵⁰ Caro 469-70. Russell only garnered 268 out of 1,230 votes on the first ballot in 1952. Lyndon Johnson unsuccessfully attempted in 1956 and 1960 to expand his base into Western states, and move beyond Russell's nearly exclusively southern coalition

⁵¹ Bartley 44

to equalize school facilities and funding. Byrnes also privately assured his former Supreme Court colleague Felix Frankfurter and Chief Justice Fred Vinson that he would ensure such equalization in state policy.⁵²

The strategy of making facts on the ground fit the argument of *Plessy* was itself a betrayal of the states' rights position of Byrnes's former colleagues in the Senate Southern Caucus, in that it accepted that the Fourteenth Amendment Equal Protection Clause created a national standard on racial issues. It was a last attempt by Byrnes to accomplish his career's project, the creation and maintenance of a zone of autonomy within which Southern states could maintain a society segregated by race.

Brown made such a project impossible, and left southern white politicians with a choice between resistance and accommodation. Byrnes struck the same defiant tone as that of other Southern governors, decrying *Brown* as judicial tyranny. He threatened to close South Carolina public schools to prevent integration,⁵³ and in *U.S. News and World Report* criticized his former colleagues in a column titled "The Supreme Court Must Be Curbed."⁵⁴ The final time of James Byrnes in public office was spent supporting massive resistance to national government, a departure from the work within that national government that had occupied most of his career.

⁵² Robertson 517-18

⁵³ Kluger 333

⁵⁴ Bartley 177

George Wallace: From Progressive to Champion of Segregation

George Wallace is best known for his high-profile opposition to court-ordered integration and to direct action civil rights protestors in the 1960s. When he was inaugurated as governor in 1963, he proclaimed his support for “segregation now, segregation tomorrow, and segregation forever.” He symbolically stood in the schoolhouse door to oppose integration of the University of Alabama, fulfilling a campaign pledge. He ran a quixotic campaign against incumbent president Lyndon Johnson in several 1964 Democratic primaries to protest the passage of the Civil Rights Act. He refused to use state law enforcement resources to protect civil rights protesters like the Freedom Riders from white vigilante violence, and even countenanced the beating of voting rights marchers at Selma by state troopers in 1965. He ran three more times for president, as an independent in 1968 and again as a Democrat in 1972 and 1976, converting his segregationist rhetoric to a general law and order message focused on crime and bussing.

The early political career of George Wallace, however, was not characterized by militant support for segregation. Wallace affiliated with the populist and progressive faction of Alabama politics in the 1950s, only fully shifting to running as the most segregationist candidate in his breakthrough election to the governorship in 1962. The early success of Wallace as a comparatively progressive candidate for elected office before *Brown*, his partial but electorally insufficient shift to a more segregationist position in the years after the decision, and his ultimate transformation into the most prominent regional opponent of integration, all demonstrate the transformative effect the Supreme Court had on Southern politics after 1954.

The early career of George Wallace is best understood through his connection to Jim Folsom, two-term governor of Alabama elected in 1946 and 1954. Wallace affiliated himself with Folsom after his election to the state legislature in 1946 and vigorously campaigned for him in 1954. Support for Folsom put Wallace on the left of Alabama politics, as the governor was the closest thing to a progressive elected in mid-century Alabama. Folsom's agenda included tax increases to support increased spending on public education, reform of the state's agriculture program to support small farmers instead of large plantation-owners, and increasing the status of blacks. Folsom's support for racial equality was expressed within the context of the Jim Crow segregation system, and did not advocate the kind of wholesale shifts in the legal status of Southern institutions that would come in the 1960s. His rhetoric called for equality within the context of Jim Crow, making the system truly "separate but equal." He called for an end to the poll tax, asking "are the Negroes being given their share of democracy, the same opportunity of having a voice in the government under which they live?"⁵⁵ He called for increased opportunities for professional education for blacks, and linked his support for an equal society with the dominant Christian religion.

This rhetoric of racial equality exposed Folsom to criticism from the more segregationist candidate in the 1946 Democratic runoff election, Handy Ellis. Ellis said that election of Folsom would result in "complete destruction of our segregation laws – laws under which our white folks and colored folks here in Alabama and the South have

⁵⁵ Carter 73

lived in peace and harmony and friendly understanding.”⁵⁶ Such criticism in the post-*Brown* South would likely lead to clear defeat at the polls. Folsom not only won the 1946 runoff, but was returned to the governor’s mansion in 1954 with a rare first primary victory.⁵⁷ His success contrasts with the period starting with the election of 1958 and ending with the passing of integration as a major issue in Alabama politics in the mid-1970s, during which the most segregationist candidate won the governorship every election. George Wallace dominated this period, winning three of five elections. The exceptions were his defeat as the more moderate candidate in 1958, and the election of his wife Lurleen in 1966 when he could not run for reelection due to term limits.

The Alabama politics that Wallace entered upon his return from military service in the Second World War was one of bifactional competition within the Democratic Party, in which the more progressive faction was most often successful. This statewide approximation of an ideologically-organized two-party electoral system was a result of the reorientation of Alabama politics by Jim Folsom. Key’s *Southern Politics* finds that many Southern states were organized with the Democratic Party by reference to a particular set of ideas and politicians. This factional organization varied from the Virginia politics of support and opposition to the Byrd machine, to the Texas competition between economic progressives and conservatives. Alabama elections for governor did not typically conform to any factional pattern, but were organized around temporary

⁵⁶ Ibid 73

⁵⁷ The state Democratic primary occurred before the *Brown* decision of May 17, thus Folsom was able to win the only election that mattered in 1950s Alabama before the decision’s effect. He easily won the November general election, as did every other Democratic candidate for governor from Reconstruction until 1978.

“friends and neighbors” followings of individual candidates. This pattern resulted partly from the two-stage primary election system, in which all candidates ran in the first primary, and if no candidate received a majority of votes, the top two finishers would compete in a runoff election. Candidates would compile massive majorities in their home county and surrounding counties, and hope that their local following was enough to make up for their lack of support statewide. Candidates would often make it to the runoff with less than 30 percent of the vote.

Folsom benefitted from this system in 1946, racking up large majorities in both his South Alabama childhood and family base and his adult residence in Northeast Alabama. The runoff, however, matched Folsom against the conservative Ellis. Consequently, Democratic runoff voters were presented with a clear choice between divergent visions for the future of the state. Folsom’s victory tracked patterns of class and demography, with Folsom running strong in the areas of the state that were home mainly to small farmers, North and Southeast Alabama. His support for increased taxation and racial moderation stimulated the coalescence of a conservative bloc located mainly in the plantation-dominated “black belt” running across the middle of the state and the comparatively wealthy urban areas of Birmingham and Montgomery.⁵⁸

In analyzing the effect of *Brown v. Board of Education* on Southern politics, the Alabama of the Folsom era is not primarily important because it was temporarily

⁵⁸ Alabama in this period was similar to Mississippi, where populists ran well in the hills of Northern and Eastern Mississippi, and conservatives in the Delta along the Mississippi River Delta. This pattern was grounded in the agricultural geography of the region, with the areas that would support plantation cotton agriculture home to large disenfranchised populations of former slaves, and reactionary white electorates hostile to all forms of progressive government.

organized into progressive versus conservative factionalism⁵⁹, but that progressive could have electoral success in Alabama. The victories of Folsom are part of the pattern, explored by Earl Black and others, of a comparatively moderate period of regional campaigns and elections.⁶⁰ Black's analysis shows how mass politics in the South, channeled through the dominant institution of the Democratic primary, provided electoral support for candidates who were not the most segregationist of those running, and who gained office mainly on economic issues. U.S. Senate elections in Alabama were characterized by relative moderation on racial issues, as Lister Hill and John Sparkman won landslide elections as economic populists just as Supreme Court Justice Hugo Black had in the 1930s.⁶¹ Sparkman's record on race, unlike more militantly segregationist Senators from neighboring states such as Richard Russell of Georgia or James Eastland of Mississippi, made him palatable to Northern Democratic leaders as vice presidential candidate in 1952.

⁵⁹The rise of George Wallace would bring to an end the "friends and neighbors" pattern in gubernatorial elections. After his 1962 victory the first Democratic primary electorate was organized around support or opposition to Wallace, always leading to a victory for him or his wife as stand-in. The Alabama Democratic primary has not since the 1980s automatically determined the general election winner, and now is usually defined by candidates attempting to both appeal to a left-leaning black base while simultaneously crafting a viable general election campaign.

⁶⁰ The identification of this period with the Dixiecrat presidential campaign of 1948 thus obscures the broader pattern of Southern elections in the pre-*Brown* period. Thurmond's landslide in Alabama does not contradict the finding of relative moderation, because the Dixiecrat ticket was the only nominally Democratic choice on the ballot. Thurmond's landslide of 80 percent thus shows only that Alabama voters were willing to vote for a militantly segregationist candidate when the alternate choice was to vote for a Northern Republican like Thomas Dewey. Thurmond's support in Alabama was a result of a hard-fought victory by anti-Truman forces in the state party apparatus, combined with the lack of an alternate means to put Truman on the ballot.

⁶¹ Lister Hill's moderation on racial issues, and support for the "Loyalist" (anti-Dixiecrat) faction in 1948 and 1952 almost caught up with him in the racially charged electoral environment of 1962. Running his last race for reelection, Hill won with only 51 percent of the vote. Republican Jim Martin was able to tie Hill to the racial liberalism of the Kennedy administration, presaging the success of Goldwater and Republican House candidates in 1964.

Although populist economic appeals were the core of Folsom's successful gubernatorial campaigns in 1946 and 1954, his rhetoric was notably tolerant on racial issues. He argued that racial equality was a fulfillment of Jesus's Sermon on the Mount:

We have got to give our fellow man the same rights and privileges which we ourselves expect to live by and enjoy. This means that every man and woman has a certain dignity which must be respected; that no man is to be enslaved by another; that every man has a voice in the choosing and operation of the government under which he lives; that he has one vote and the right to cast it; that he fears no reprisal for expressing his honest conviction.⁶²

Folsom's relatively progressive views were expressed in the context of the segregated society; he was advocating something like a true separate but equal system.

Folsom even criticized the poll tax and the unwillingness of local voting registrars to register blacks to vote, core components of the state election system that maintained an overwhelmingly white franchise. When running for governor in 1946 he asked "Are the Negroes being given their fair share of democracy, the same opportunity of having a voice in the government under which they live?" Folsom even entertained black Congressman Adam Clayton Powell, who represented New York from a Harlem district, in the Governor's mansion in Montgomery. Sharing a drink with a prominent black politician and civil rights leader showed Folsom's progressivism on issues of race, and would later be used to tar him as pro-integration in the post-*Brown* backlash period.

From his start in electoral politics George Wallace cast himself as a populist, and affiliated himself with Folsom when he entered the state legislature in 1946. Wallace had given nominal support to Folsom's more conservative opponent Handy Ellis, a move that fit the demography of Wallace's Barbour County base. Barbour County, which would

elect Wallace as Probate Judge in 1952, is located on the eastern end of Alabama's black belt. The County voted for Folsom in 1946, but was just south of the broad swath of the black belt across the middle of the state where Ellis had support.⁶³

The 55 percent victory of progressive Jim Folsom pointed the way to statewide electoral success for the young and ambitious George Wallace. He cemented his connection to Folsom, and his connection to what passed for racial progressivism in mid-century Alabama, by securing appointment by Folsom to the governing board for the black state Tuskegee University. His next move would be to consolidate his home base, which he did by securing election as Circuit Judge. Wallace served as Folsom's South Alabama campaign manager when the former governor was eligible to run again in 1954. The next steps in the friends and neighbors politics of one-party Alabama were clear: run for governor, pump enough votes out of his home base to secure a spot in the runoff, and then reassemble Folsom's geographic base in Northern and Southeast Alabama to gain the party nomination and certain victory in November.

By the time that the gubernatorial election of 1958 came around, Alabama politics had been transformed by the backlash to court-ordered integration. No longer would the traditional campaign strategies based on economic appeals to demographic and geographic groupings be sufficient to gain election. Victory would go to the candidate who could most clearly and vociferously defend segregation. Wallace sensed this shift and attempted to transform his image to fit the backlash that was sweeping the South.

⁶² Carter 72

⁶³ See Key 43

But in 1958, he had not yet gone far or fast enough in his race to the militant pole of the segregationist continuum, owing partly to his more progressive history.

The first major post-*Brown* conflict over school integration in Alabama public school concerned the flagship campus of the University of Alabama in Tuscaloosa. On February 3, 1956 a federal District Court in Birmingham ordered the admission of Autherine Lucy, a black woman, to the heretofore segregated institution. Folsom was out of state, and took no action to support or oppose her admission. University officials also took no action, and Lucy was forced to flee campus in a police car. The University then expelled Lucy for causing disorder, which was allowed by the federal court.⁶⁴

Governor Jim Folsom responded to the growing backlash against *Brown* and the Lucy case that followed it just as he had responded to the Dixiecrat backlash. Folsom counseled against reaction against the Supreme Court, just as he had counseled against desertion from the Truman-led Democratic Party. Wallace biographer Dan Carter discusses Folsom's opposition to the state legislature resolution of interposition:

When the politicians start hollering "Whip the Nigger" Folsom told dwindling crowds of supporters, "then you know damn well they are trying to cover up dirty tracks." He contemptuously dismissed the interposition resolution as so much "clap-trap Like a hound dog baying at the moon and claiming it's got the moon treed." And he refused to join the growing chorus of defiance against the decision in *Brown*. "You can call the Supreme Court Justices s.o.b.'s if you want to, but that doesn't relieve Southern officials sworn to uphold the Constitution of their responsibility."⁶⁵

Governor Folsom was rapidly shifting from an asset to a liability for a young upwardly mobile politician like Judge George Wallace. Folsom only mustered 25 percent of the

⁶⁴ Carter 83-84

⁶⁵ Ibid 87

vote in a race for a position as a delegate to the Democratic National Convention in 1956, the kind of election that a sitting governor should win easily. Folsom's refusal to follow the Dixiecrats in their defiance of national racial liberalism had not hurt at the polls back home. But after Folsom won his second term as governor in 1954, backlash to the Supreme Court would undermine his political standing in a way that the pro-civil rights Truman administration had not only six years before.

Wallace, who less than two years previously had traveled the state in support of Folsom, rapidly distanced himself from his former ally. He complained publically in the state capitol in Montgomery that Folsom had "gone soft on the nigger question." He publically rebuffed Folsom's requests to talk, and told friends who still backed the governor that "Folsom's gonna gut you. Hit him. You better hit him now before it's too late."⁶⁶

Wallace appeared at a White Citizen's Council rally at the high school football stadium in his adopted home town of Clayton. He also publically vowed that he would not comply with a FBI request for grand jury lists from his Barbour and Bullock County judicial circuit, to prevent the Justice Department from inquiring about exclusion of blacks from jury service. Even though a Justice Department official denied there were any complaints about or investigation into Wallace's court, such militant rhetoric publically put Wallace on the segregationist side of the race issue that was rapidly dominating state politics.

⁶⁶ Ibid 83

While Wallace was willing and able to use his judicial office to establish a segregationist record in preparation for his run for governor in 1958, he was clearly surpassed in public obstruction of integration by Attorney General John Patterson. Coming into office just after the *Brown* decision, Patterson dusted off a little used state law mandating that organizations that were headquartered out of state must register with the state government in Montgomery and used it against the NAACP. This kind of legal maneuver had previously been used by New York State to block Ku Klux Klan action in New York, but now Patterson was using the tactic to run the New York-based NAACP out of Alabama. He succeeded when he obtained a subpoena for the civil rights organization's membership list, causing the one NAACP staffer to flee the state instead of exposing members to retribution.

Although the gambit against the NAACP would be overturned by the Supreme Court in 1958, it effectively prevented the organization from operating in the state for years. It also established John Patterson's credentials as a militant segregationist as he campaigned for governor in 1958. Patterson, who received campaign help from an Alabama chapter of the Ku Klux Klan,⁶⁷ was able to establish himself as the most segregationist of the three major contenders, surpassing Wallace and the racial moderate Jimmy Faulkner. Patterson was a new figure in Alabama politics, with his election as Attorney General coming on a wave of sympathy after his prosecutor father was killed while combating organized crime in Phenix City, Alabama. Patterson initially was not

⁶⁷ Carter 95

the favorite, with a *Montgomery Advertiser* survey of state political leaders pegging Wallace and Faulkner as the favorites.⁶⁸

Patterson's militant segregationist campaign gained him first place in the first primary, and then allowed him to finish off Wallace in the runoff. Wallace, according to Dan Carter, waged a campaign of economic populism and racial moderation: "Wallace gambled that voters, particularly those in north Alabama, would respond to a positive program emphasizing improved roads, better education, an industrial recruitment – along with a more dignified defense of segregation." Wallace even tried to gain votes by attacking John Patterson as a race-baiter after the Klan publicly endorsed him, saying "Patterson chatters about the gangster ghosts of Phenix City while he himself is rolling with the new wave of the Klan and its terrible tradition of lawlessness."⁶⁹

Wallace's attempt to counter Patterson's segregationist strength by rebuilding the progressive economic coalition that elected Folsom in 1946 and 1954 was unsuccessful. His strength in the areas of the state with low black populations, in the north and southeast, were overcome by Patterson landslides in black belt counties. Patterson later attributed his victory to his segregationist campaign, claiming the "primary reason I beat him was because he was considered soft on the race question at the time," and "it was political suicide to offer a moderate approach." Patterson's four years as governor were marked by continued opposition to integration, such that by end of his term in 1963 the amount of school integration in Alabama was negligible.⁷⁰

⁶⁸ Ibid 91

⁶⁹ Ibid 95

⁷⁰ Rosenberg 99

George Wallace was quoted by biographer Marshall Frady, and by campaign aides who were with him the night of his gubernatorial runoff loss, as saying of John Patterson, “Well boys, no other son-of-a-bitch will out-nigger me again.”⁷¹ Wallace later denied the quote; it did not fit with his late career as governor of Alabama, in which he was elected with substantial black support in 1974 and 1982. The rise of the conservative Republican Party in the Deep South had made it necessary for even conservative Democrats like Wallace to add blacks to their coalition to counteract the migration of conservative suburban whites to the GOP. But the quote, whether real or apocryphal, describes the actions and campaigns of George Wallace after that initial loss in 1958. He would carry out an intentional rehabilitation of his political career as a candidate who would have the strongest association with segregation of any candidate in the field.⁷² In the South of the post-*Brown* backlash period, that would be a successful strategy.

The repositioning of George Wallace as the most segregationist candidate running for governor began soon after the inauguration of John Patterson as governor in 1959. On January 9 Federal District Judge Frank Johnson provided Judge Wallace with a high-publicity opportunity to burnish his Jim Crow credentials. Johnson, an Eisenhower appointee, would frequently play the integrationist antagonist to the segregationist Wallace. Their 1959 confrontation came as a result of the mostly ineffectual 1957 Civil Rights Act, which established a federal Civil Rights Commission that could do little

⁷¹ Carter 96

⁷² Wallace’s campaigns in 1974 and 1982 were not run on explicitly segregationist platforms in the context of post-integration Alabama, but his past militancy made him immune from challenges from the right on racial and social issues.

except investigate allegations of voter suppression.⁷³ When the Commission began an investigation into the disenfranchisement of black voters in Southeast Alabama, Federal Judge Johnson ordered the release of voter registration lists of Barbour and Bullock counties. Those records were under the control of George Wallace as the state judge for the district including those counties.

Wallace initially refused to surrender the records, but met resistance from Johnson. In the face of a possible contempt finding and significant jail time, Wallace devised a way of complying while posing in public as a staunch defender of the whites-only franchise. He summoned a hand-picked grand jury, and handed the records over to them. He then let the grand jury foreman know that he should allow staffers from the Civil Rights Commission to examine the records in the grand jury room. This diversion allowed Wallace to go before Judge Johnson in Federal District Court and stand in defiance of the letter of the order, but avoid jail time.⁷⁴ This episode served as foundation for Wallace's 1962 gubernatorial campaign as "The Fighting Judge."

When George Wallace ran to succeed John Patterson as governor in 1962, he demonstrated that he had learned the lessons of the 1958 campaign. His newspaper and print advertisements counseled voters to "Vote right – vote white – vote for the Fighting Judge." He connected his support for white supremacy with a states' rights constitutional argument. The most famous line of the campaign, later to land him his first major national attention, referred to the possibility of federal court-mandated integration: "I

⁷³ The requirement that any individual tried under the 1957 law must be tried under a locally-selected jury made the possibility of enforcement remote, if not impossible.

⁷⁴ Carter 99-102

shall refuse to abide by any such illegal federal court order even to the point of standing in the schoolhouse door.”⁷⁵

Helping Wallace to craft his rhetoric of racism and defiance to federal authority was a new addition to the campaign: the right-wing writer Asa Carter. Carter was prominent in Alabama white supremacist circles, and often worked with Ku Klux Klan leader Robert Shelton. Carter worked as an organizer for both the Alabama Citizens’ Council and various Klan groups, organizing mobs that hounded Autherine Lucy from the University of Alabama and assaulted civil rights activists in Birmingham.⁷⁶ After Wallace’s election Carter would write the inaugural address with the line “segregation now, segregation tomorrow, and segregation forever.”

George Wallace had two major opponents in the 1962 Democratic primary for governor. Ryan deGraffenried, a Tuscaloosa attorney, appealed to metropolitan voters in Birmingham, Montgomery and other small cities. He would narrowly capture second in the first primary, bumping Jim Folsom from a comeback attempt. Wallace soundly defeated deGraffenried in the runoff, winning a majority of the vote in every county except those containing Birmingham and Tuscaloosa, and five other counties scattered across the state.⁷⁷ He had successfully transformed himself from a populist in the Folsom mold to a firebrand militant segregationist. Wallace understood his comeback as a result of his shift to more militant support for white supremacy, telling the editor of the *Florence Times* newspaper, “I started off talking about schools and highways and prisons

⁷⁵ Ibid 105

⁷⁶ Ibid 107

⁷⁷ See Earl Black 224

and taxes – and I couldn't make them listen. Then I began talking about niggers –and they stomped the floor.”⁷⁸

The poor showing of Jim Folsom in the election of 1962 shows the transformation of Alabama electoral politics after *Brown* and its progeny like the Autherine Lucy case and the Little Rock integration crisis. Folsom ran for governor four times: in 1942, 1946, 1954 and 1962. Until 1962 the arc of his career was ascending, going from second place in 1942 to a runoff victory in 1946 to a first primary victory in 1954. The years after his smashing reelection victory, however, were not kind to Folsom, as he stood against the rising tide of racial militancy by opposing a state interposition resolution and publicly supporting the authority of federal courts. Folsom's New Deal-like progressive economic appeals were a relic of a different time in Alabama politics. The last sign of Folsom's fall from popularity and political power was a defeat in statewide race for Public Utility Commissioner in 1964 to Bull Connor, who was riding the wave of popularity among Alabama white voters after his role in the 1963 Birmingham demonstrations. Meanwhile Wallace would take his rhetoric of racial resentment and defiance to federal authority to a national stage, but remain the dominant figure in Alabama politics.⁷⁹ The politics of economics, of taxation and public education and public improvements, would not return to Alabama gubernatorial elections until the first post-Wallace election in 1978. By then the conservative voters of the black belt and

⁷⁸ Carter 109

⁷⁹ The 2006 Alabama election for Lieutenant Governor provides an example of the transformation of Alabama politics since the days of Jim Folsom and George Wallace. George Wallace Jr., a sometimes successful Democratic candidate for office in the 1990s who has since switched parties, narrowly lost in the Republican primary. If he had made it to the general election, he would have faced James Folsom Jr. The

metropolitan areas had migrated to the Republican Party and the remaining progressive whites joining with blacks to support Democrats. This class-based voting pattern continues in Alabama statewide elections, with Democratic candidates sometimes able to attract enough working class and poor white voters (who vote Republican for president) to defeat conservative Republicans.⁸⁰

During the period after Folsom last victory in the Democratic gubernatorial primary in 1954 lasting for almost two decades, the elections for governor would belong to militant segregationists like John Patterson and the retooled George Wallace. This shift was partly a result of the backlash to *Brown*, showing the massive effect the decision had upon regional politics. The shift also fits the pattern of judicialization, with conflict over fiscal policy giving way to a contest to become perceived as the most adamant opponent of court-mandated integration. Wallace gained statewide and national electoral success from his politics of constitutional advocacy. While his actions, like handing over voter rolls to a grand jury instead of Judge Frank Johnson and “standing in the schoolhouse door” were ineffective in stopping legal integration, they worked to make Wallace a prominent advocate of a states’ rights understanding of the American constitutional system.

son of the former progressive Democratic governor, narrow loser as Democratic nominee for Senator in 1978 and Governor in 1994, won a narrow victory.

⁸⁰ Michael Barone and Richard Cohen note in the *2008 Almanac of American Politics* that in his narrow loss to Republican Bob Riley, incumbent Democratic Governor Don Siegelman amassed “the coalition of blacks and poor whites the political scientist V.O. Key longed for” (43).

Bull Connor: The Segregationist in Power after *Brown*

At the height of the Civil Rights Movement in 1962 and 1963, George Wallace and Bull Connor were together on the same side of the conflict that defined Alabama politics. Wallace provided the rhetoric and symbolism for a reactionary militancy that was implemented in public policy controlled by Connor. But in 1948 they had been on opposing sides of the issue that divided the white power structure and electorate in Alabama – whether to support the national Democratic presidential ticket and platform. When the delegates assembled in Philadelphia responded to Minneapolis Mayor Hubert Humphrey’s call to “step forward into the light of human rights” and passed a strongly pro-civil rights platform plank, the majority of the Alabama delegation walked out of the convention, leading other Deep Southern delegates in a party bolt that led to the segregationist Dixiecrat candidacy of Strom Thurmond. Bull Connor led the Alabama rebels out of the convention hall carrying the Alabama state banner. He walked past Loyalist delegate George Wallace, who remained with his mentor Jim Folsom at the convention and supported the pro-civil rights Harry Truman for president.

The two aspiring politicians would both later run for governor, but only Wallace was successful. While Wallace was working for Jim Folsom’s progressive economic agenda in the state legislature, Connor was running for governor in 1950. Running as a militant segregationist, Connor finished a distant fifth. Pushed out of municipal office by scandal, he struggled in several runs for local office, finally regaining his City Commissioner position after the backlash to *Brown* and the attempted integration of the University of Alabama came to dominate state politics. In 1962 and 1963, he became the

right man in the right office to serve as the creative antagonist for the direct action civil rights protest movement.

In many respects the careers of George Wallace and Bull Connor were similar. Both first won elective office as member of the state legislature, and then won local office, Wallace as a judge covering two counties and Connor as a Birmingham City Commissioner. Both used their local base to run for governor, with some hope for success. The friends-and-neighbors localism of the Democratic first gubernatorial primary made such campaigns by local officials viable, even though they were not running from a higher-profile office like Congressman or a statewide down ballot office. Connor, 22 years older than Wallace, mounted an explicitly segregationist campaign in 1950, too early to capitalize on the backlash to *Brown v. Board of Education* and its progeny. He spent the next few years in an unsuccessful attempt to retain city office, until his backlash politics again appealed to the electorate.

While Wallace gained his prominence as an opponent of civil rights by rhetoric and symbolic actions designed to gain national attention, Connor became a national figure by being chosen by his opponents. Birmingham was chosen as the site for direct actions demonstrations in 1963 because of the likelihood that Connor would react to nonviolent protest with police violence. After Martin Luther King and the Southern Christian Leadership Conference failed to move national leaders with their 1962 demonstrations in Albany, Georgia, they sought a city that would provide a better setting for dramatizing the oppression of Jim Crow segregation. Albany Sheriff Laurie Pritchett had quietly arrested protesters, briefly held them in jail, and then released them. He had

arranged with several neighboring law enforcement jurisdictions to take arrested protesters, making it impossible to “fill the jails.” King and SCLC left Albany without a symbolic or policy victory. Connor provided the antagonist to nonviolent protest that Pritchett had not.

Bull Connor occupied the position of Birmingham Public Safety Commissioner because his politics of segregationist militancy was successful at the ballot box in the backlash period of the late 1950s and early 1960s. He took advantage of the opportunities presented by the backlash against court-ordered integration by presenting voters with a consistently extreme position on racial issues. George Wallace pursued deliberate strategies in the post-*Brown* period, eventually emerging as the clearly most militantly segregationist candidate in the 1962 gubernatorial primary. Connor’s record in office from his first stint in municipal government was clearly segregationist, and he lacked any connection to racial moderation. That record would provide the foundation for his second period in municipal office, which coincided at its end with the climactic protests of 1963.

As Public Safety Commissioner of Birmingham, Connor had frequent opportunities to implement his views on race and segregation as public policy. Birmingham, like most Deep Southern cities, was segregated in housing and public accommodations. But as an urban area, it was home to an active civil rights community by regional standards, particularly in the form of activist reverend Fred Shuttlesworth. Birmingham also was the site of events that brought to the Deep South national figures in progressive and civil rights protest. Local civil rights activists, while certainly vulnerable

to attacks like the bombing of Shuttlesworth's church and parsonage in 1956, were able to carve out space for activism in urban areas that would be unthinkable in the rural Deep South.⁸¹

Connor began building a reputation as a strong defender of segregation soon after his first election to the Birmingham City Commission in 1937. When the Southern Conference for Human Welfare, a regional group that worked for labor and civil rights, met in Birmingham in 1938, Connor enforced city segregation laws. Meeting attendees, who included Alabama Senator Lister Hill, Eleanor Roosevelt, Alabama Governor Bibb Graves and Supreme Court Justice Hugo Black, were forced to hold separate meetings for whites and blacks. Connor publicly proclaimed that, as long as he was commissioner, "negroes and whites will not segregate together."⁸² Such a pronouncement may have mangled vocabulary, but its meaning on racial issues was clear.

Ten years later another Birmingham meeting of a civil rights group that included whites and blacks gave Connor the opportunity to burnish his segregationist image. The Southern Negro Youth Conference came to town in May of 1948, weeks before the Democratic Party Convention in Philadelphia that would see Connor and other southern delegates bolt the party. Connor attempted to use his influence to keep the group from

⁸¹ Douglas McAdam, in his study of the political resources that became the foundation of the Civil Rights Movement (pp. 98-100), argues that the growth of the urban black church in the first half of the twentieth century was crucial in the growth of the direct action protest movement. The migration of blacks within the South from rural to urban areas swelled the membership of large churches that could pay full-time ministers out of members' collections. The rural congregations these internal southern migrants were coming from were often dependent on the financial support of white agricultural employers, and could only hire ministers who served several churches. Urban black churches like Martin Luther King's Dexter Avenue Baptist Church in Montgomery could independently support ministers and congregations in political activism.

⁸² Nunnolley 30

meeting in Birmingham altogether, pressuring local black ministers not to let their churches be used as a meeting place. The black Alliance Gospel Tabernacle agreed to host the meeting, and the city police arrested three white conference attendees for violating the city segregation ordinance. The church responded by erecting a barrier in the sanctuary separating white and black seating areas, and designated the front entrance for blacks and the back entrance for whites.⁸³

When U.S. Senator Glen Taylor of Idaho, a liberal running as Henry Wallace's vice presidential candidate on the Progressive Party ticket, attempted to enter through the front door, was arrested by police. He was threatened with jail and the kind of treatment regularly meted out to black arrestees, and released on bond. Taylor was later convicted, sentenced to 180 days in jail, but never returned to Birmingham to serve jail time. The incident gave Connor a chance to get quoted in local media identifying the meeting with non-southern attempts to flout segregation laws and legal order generally.⁸⁴

Connor's role as Alabama delegate to the 1948 Democratic Convention gave him an additional platform for his segregationist views, a platform that also had statewide relevance. While committed to renominating President Truman when he began his campaign for a statewide at-large delegate spot, Connor withdrew his endorsement after Truman's February address to Congress in favor of a strong civil rights program. Connor said that "segregation is absolutely necessary and must be maintained to avoid serious difficulties" and in a campaign flyer sought to tie segregation to broader conservative themes:

⁸³ Ibid 33

It is my hope that, as one of your delegates, I can help roll back the attempt of meddlers, agitators and Communist stooges, to force down our throats, through our own Democratic Party, the bitter dose they are now offering us under the false name of Civil Liberties.⁸⁵

Connor won election at that year's state Democratic convention, and went to Philadelphia pledged to oppose any pro-civil rights platform with a walkout. He kept his pledge and supported Strom Thurmond for president.

His segregationist record, when combined with a law-and-order record that helped him get reelected Commissioner in 1949, put Bull Connor in position to run for governor in 1950. His position as a citywide elected official in the state's largest city and his role in the 1948 Dixiecrat revolt was enough of a foundation to possibly make the runoff in Alabama's friends and neighbors Democratic primary, but his segregationist appeal netted less than a tenth of the vote and sixth place. The revolt of 1948 lacked staying power, and segregationist campaigns like that of Bull Connor were not what voters chose. Conservatism in general was a viable campaign stance; conservative Gordon Persons finished far ahead of the progressive Folsom-backed Phillip Hamm. Connor's loss followed the regional pattern of elections contested over fiscal issues by candidates who supported segregation but in a comparatively moderate manner.

Issues not directly related to segregation would push cause Bull Connor to be out of office when *Brown v. Board of Education* sparked a sustained backlash among southern whites. Although he had long been criticized for misusing public resources and putting his own interests above the needs of the police and fire departments, he declined

⁸⁴ Ibid 33-34

⁸⁵ Ibid 32

to run for reelection in 1953. Connor's public image was sullied by an impeachment inquiry and a morals conviction for violating city ordinances against occupying a hotel room with a woman not your wife and having intercourse outside of marriage. Two impeachment trials ended in mistrials, and the Alabama Supreme Court overturned the morals charge, but Connor decided against putting himself before the voters again in 1953.

Bull Connor would spend four years out of office. A victory for his old post of City Commissioner in 1957 was his first electoral victory since 1949. By 1957 the statewide furor over the Autherine Lucy situation had established support for segregation as the dominant issue in the white Alabama electorate, and Connor would win every city and statewide race until 1972. After his office was eliminated in a Birmingham government reorganization that took effect just after the civil rights protests of 1963, Connor was elected to two terms as chairman of the state Public Utilities Commission. His statewide identification with coercive and violent opposition to desegregation allowed him to build the statewide constituency that had eluded him in 1950. Connor also continued to be selected as a delegate to the Democratic National Conventions in 1964 and 1968.

During the period between leaving office in 1953 and becoming a national anti-civil rights figure in 1963, Connor won a steadily increasing share of the vote in attempts to get back into municipal office. He suffered his first loss when he failed to make the runoff in the Democratic Primary for sheriff in spring 1954. In May 1956, soon after the Lucy episode at Tuscaloosa, Connor ran for an unexpired post on the City Commission.

He made the runoff this time, but lost to another former Commission member, who credited his victory to Connor's lack of identification by voters with the transportation portfolio of the position. When Connor's old post of Public Safety Commissioner was up for election in 1957, the almost-entirely white Birmingham electorate returned him to power. He was reelected with 61 percent of the vote in 1961 in a four-candidate field, his largest vote ever.

The ups and downs of Bull Connor at the ballot box in Alabama in the 1940s, 1950s and 1960s show the importance of the electoral backlash that dominated state and local politics for over a decade. This segregationist reaction, which *Brown* and its progeny contributed to, altered the output of Alabama elections. The dispositive Democratic primary in the 1940s and early 1950s provided multiple paths to office for white politicians who avoided frontal critiques of segregated institutions. The militant focus on race that Connor presented was successful in some contexts, but was usually beaten by economic appeals in elections for governor and senator. By the late 1950s Alabama politics was dominated by politicians like John Patterson, Bull Connor and the resurgent George Wallace.

The changed behavior of voters put into power politicians who produced rhetoric supporting a vision of the national constitutional order that granted states wide latitude to maintain systems of institutionalized white supremacy. Elected officials also were willing to use the public resources they controlled to defend this constitutional argument against the nonviolent protest movement that marched and rode and sat in to support an integrationist vision of the constitutional order. Connor withheld police protection from

Freedom Riders in 1962, allowing a white mob to beat those attempting to put into practice Supreme Court decisions integrating interstate bus lines.⁸⁶ He would then deploy police and fire department officers to beat protestors, hit them with fire cannons, and attacked them with police dogs. He was using the municipal resources at his command to put the rhetoric and constitutional arguments of men like Wallace into action.

Orval Faubus: Seizing the Opportunities of Post-*Brown* Backlash

The career of Orval Faubus followed the same pattern as George Wallace. Both achieved early electoral success as part of loose progressive factions in state politics. Both used the powers and visibility of the governor's office to oppose integration both in policy and symbolism. Both seized the opportunity of the backlash to *Brown* and the litigation it spawned to dominate state politics and become national figures.

Faubus differed from Wallace in two important ways. First, unlike Wallace after his initial victory in 1962, Faubus involuntarily left statewide office, failing in comeback attempts to defeat moderate Democratic governors Dale Bumpers in 1972 and Bill Clinton in 1986. These losses constituted additional defeats for the politics of segregationist populism that Faubus constructed in 1950s and 1960s. Faubus retired after narrowly defeating Republican Winthrop Rockefeller in 1964 and segregationist Democrat James Johnson was unable to reassemble the Faubus coalition and lost to Rockefeller in 1966. While Wallace was continuing his electoral dominance in Deep

⁸⁶ He claimed to have given the entire police force a day off for Mother's Day.

Southern Alabama, Faubus involuntarily left politics in Peripheral Southern Arkansas as a relic of the 1957 backlash.

Faubus and Wallace were also similar in that they entered state politics as supporters and protégés of progressive governors who campaigned as moderate segregationists. Just as Wallace's past racial progressivism was a liability in the 1958 race for governor, Faubus actually carried with him leftist baggage that almost derailed his election in 1954. His father had been an openly socialist political activist, and young Orval had briefly attended the leftist activist Commonwealth College. With the advantage of being in office in 1957 when court-ordered integration transformed Arkansas politics, Faubus could quickly reinvent himself as a last-ditch defender of segregation and subsume his earlier progressivism. As a result Faubus did not have to suffer a defeat as Wallace did in 1958, as the former Alabama moderate was unable to put enough distance between himself and the moderate Folsom.

Orval Faubus's 1954 election and 1956 reelection⁸⁷ made possible his prominent transformation in 1957, and were an indirect result of the defeat of his mentor Sid McMath in 1954. McMath, for whom Faubus campaigned and later served as a gubernatorial staffer, won his 1950 election on a platform of progressive stances on economic issues. McMath's surprise defeat by the conservative establishment-backed Frank Cherry, well-funded by Arkansas business interests seeking less government regulation and lower taxes, created an opening for Faubus. Faubus ran an economic

⁸⁷ Arkansas was the last Southern state to elect a governor every two years, eliminating the practice with the 1986 reelection of Bill Clinton to a four-year term. The only remaining states with two-year gubernatorial terms are New Hampshire and Vermont.

populist campaign that criticized Cherry for cutting welfare benefits, vetoing a bill repealing the regressive taxes on small producers of chicken and eggs, and allowing private monopoly utilities to raise electricity rates.⁸⁸ He finished second to the incumbent in the first primary, and then defeated him in the runoff.

In addition to pushing a tax increase to fund education through the legislature,⁸⁹ while in office Orval Faubus governed as the closest thing to a racial liberal as possible without directly confronting the institutions of white supremacy. He appointed six black citizens to the state Democratic Committee. On his watch five public school systems began desegregating, and Arkansas became the first Southern state to open all its white colleges to black students. He had even awarded an “Arkansas Traveler” honorific designation to Daisy Bates, the president of the state branch of the NAACP who would lead the effort to integrate Little Rock Central High School in 1957. He even told a group of people gathered at the home of Winthrop Rockefeller, then his appointed state coordinator of industrialization, that *Brown v. Board of Education* was correctly decided, stating “If I had been on the Court, I would have voted that way myself.”⁹⁰

Faubus faced criticism of his relatively liberal record on race in his first campaign for reelection. Running a campaign as a militant segregationist,⁹¹ Johnson vowed to replace the six black Faubus appointees to the state party committee with whites. In winning 42 percent against Faubus, an incumbent who should have benefitted from the

⁸⁸ Reed 86-87

⁸⁹ Bass and DeVries 90

⁹⁰ Reed 169

custom of giving governors at least four years to establish a record, Johnson demonstrated the possible vote-winning potential of a militant segregationist campaign. He would have to wait a decade for another chance to run that campaign, as Orval Faubus would in 1957 preempt the possibility of a challenge from his conservative flank on race.

It is beyond the scope of this dissertation to examine in detail the complicated and contested chain of events of the early fall of 1957 that would make Orval Faubus a national leader in the fight against court-ordered school integration. But in summary, after calling out the Arkansas National Guard to block the court-ordered admittance of nine black children to Central High, and prompting Eisenhower to federalize the Guard and then replace it with national Army troops, Faubus was inextricably linked with militant resistance to the desegregation of public schools in a way that would pay electoral dividends. Earl Black writes that:

During much of the post-*Brown* era, gubernatorial elections in Arkansas were dominated by Orval Faubus. Faubus's efforts in 1957 to resist token school desegregation in Little Rock gave him an unchallengeable position in Arkansas politics and, somewhat misleadingly an international reputation as an intransigent and virulent segregationist.⁹²

Faubus's policies as governor in general, while never returning to the progressivism of his first term, did not fit the militant segregationist image that he presented during the Little Rock crisis. But his actions and symbolic defiance led to militant segregationist reelection campaigns in 1958 and 1960, and to smashing success at the ballot box until he retired in 1966. Faubus was never forced into a runoff in the Democratic primary, and

⁹¹ Earl Black (172-173) classifies the 1956 race as between the moderate segregationist Faubus and the militant segregationist Johnson. The victory of the moderate Faubus was rare in the post-*Brown* period, with militant segregationist losses usually to incumbents in Peripheral Southern states.

was only seriously challenged in the general election by Winthrop Rockefeller in his last campaign as an incumbent in 1964.

Orval Faubus's 57 percent victory that fall would be the last gasp of his segregationist politics in Arkansas. Rockefeller constructed a post-Voting Rights Act biracial coalition of blacks and whites that defeated James Johnson, the militant segregationist who battled the pre-Little Rock Faubus. The first Democratic governor of Arkansas after Faubus was the racial and social progressive Dale Bumpers, who defeated Rockefeller in 1970 after easily beating back a comeback attempt by Faubus in the Democratic runoff.

Faubus was an unlikely champion of the social conservatism of white supremacy. His previous progressive mentor Governor Sid McMath said, "the last person I would have expected to have called out the National Guard in defiance of federal court orders was Orval Faubus."⁹³ His 1957 turnaround made Faubus the chosen candidate of an entirely different coalition than the one that catapulted him from relative obscurity to the governorship in 1954. In the first primary that year, he made the runoff with support mainly in his home area of Northwest Arkansas, where the small black population did not drive white voters to conservative candidates. In 1956 Faubus expanded his support beyond his home area, but the militant segregationist Johnson won majorities in several counties in Southeast Arkansas, the only part of the state with a black belt demography. After the Little Rock crisis, Faubus in 1958 won majorities in all but two of the state's

⁹² Ibid 100-101

⁹³ Bass and DeVries 92

counties. When his support dropped in later years, it dropped in the more tolerant Northwest Arkansas region that once provided the progressive Faubus's base of support.

The politics of militant segregationism practiced by Faubus after 1957, which constituted a similar kind of advocacy about the constitutional system as that presented by George Wallace, had greater staying power than previous appeals based on competing visions of fiscal policy. Faubus's two predecessors, Ed McMath and Frank Cherry, had won office with opposing plans for how the state should tax its citizens and for what purposes it should spend that tax revenue. Each was defeated in their first run for reelection, McMath by Cherry and Cherry by Faubus. The post-Little Rock politics of defiance in the face of court-mandated desegregation won Faubus four nearly uncontested victories as the most prominent Arkansas defender of white supremacy.

Dialectical Causation

The backlash effect on Southern elections described in is connected to policy change through a process I call dialectical causation. The *Brown* decision stimulated both support and opposition, aiding both sides in the civil rights struggles of the 1950s and 1960s. The election of politicians like George Wallace and Bull Connor formed one side of the dialectic, and the direct action civil rights movement the other. If the Birmingham demonstrations are understood as the result of a dialectical change process, then evidence of opposition to *Brown* is not necessarily evidence of a lack of effect on society and public policy. While the dialectical change process does not only originate from courts, there are characteristics of the Supreme Court's indirect effects that are particularly well-suited to contribute to this pattern of social change.

The concept of dialectical causation helps to link events outside the judicial system that occurred in the decade after *Brown II*, and place the Supreme Court in what Michael McCann has termed “the complex chain of events that we understand as the civil rights movement leading up to the congressional passage of the 1964 Civil Rights Movement.”⁹⁴ Rosenberg is correct in focusing on the long continuation of public school segregation in the years after the Supreme Court declared the practice unconstitutional. Integration of schools in the Deep South was clearly ordered in *Brown*, and at least hoped for in *Brown II*, even with its ambiguity and lack of a timetable. He is also correct in identifying the causal significance of congressional and presidential action in 1964 and 1965. He assumes, however, that the indirect effects stimulated by *Brown* were either irrelevant to legislation and executive branch action, or that those effects slowed the progress of civil rights legislation in Congress.⁹⁵ The dialectical causation concept helps to highlight ways that the events of the decade after *Brown II* were relevant to later executive and legislative action.⁹⁶

⁹⁴ Gillman and Clayton 79.

⁹⁵ If backlash to the Supreme Court slowed down Congressional commitment to civil rights, it would most likely take the form of weakening the position of liberal proponents of civil rights legislation in the Senate (because of the lack of a filibuster and other procedural differences from the House, combined with a larger bloc of liberals, the House at the time would easily pass whatever civil rights bill emerged from the Senate). Rosenberg only addresses the causal relationship between *Brown* and the 1957 act in a short section (118-19) that cites primary and secondary sources to argue that if there was external pressure for a bill in 1956 and 1957, it came from reaction to the Emmet Till murder and the Montgomery bus boycott. Caro’s account of the bill’s passage in his biography of Lyndon Johnson argues that three factors led to the Senate considering and rejecting a strong bill in 1956 and passing a weak one in 1957: Republican desire to gain black votes outside the South, Southern Democratic desire to prevent integration, and the attempt by Southern Senators to buttress Lyndon Johnson’s 1960 presidential campaign. None of these would at first glance seem to be weakened by the backlash to *Brown*. Changes in the relative balance of forces in the Senate might have led to no bill passing, but would not have been able to overcome Southern resistance to anything like the 1964 and 1965 legislation.

⁹⁶ Dialectical causation provides a framework for me to analyze the significance of indirect effects of *Brown* that are deemphasized or ignored in Rosenberg’s account. McCann argues that *The Hollow Hope* is

The causal relationship between *Brown* and the successful demonstrations in Birmingham and Selma is dialectical because it has three components: an activating event that empowers opposing forces; opposing forces that move in a direction that will lead to direct conflict in the future; and conflict that leads to a new equilibrium of forces in politics that is significantly different from what existed before the initial event. The Supreme Court sparked a reaction that empowered both supporters and opponents of integration.⁹⁷ The form taken by these reactions was dialectical because the direct action civil rights movement and southern militant segregationism were empowered to go forward in ways that would bring them into conflict. The conflict between thesis and antithesis in Birmingham and Selma was crucial to the construction of a new equilibrium for the politics of race, where integration gained the force of law.

The concept of the dialectic is not intended here to include the ideas of dialectical political theorists like Hegel or Marx. I am not claiming that Court-stimulated dialectical conflict is teleological, moving toward a predetermined purpose. In the conclusion of this dissertation I briefly discuss the possibility that the politics of race in America are inherently dialectical, but the data discussed in previous chapters only supports strong conclusions about the 1950s and 1960s. Here the concept of the dialectic is confined to the creation of thesis and antithesis, which come into conflict in a manner that creates a new state of affairs.

“focused mostly on judicial capacity to coerce or inspire changes in behavior rather than changes in variable social contexts of struggle” (p 291 n12).

⁹⁷ Whittington argues that polarized response to a Supreme Court decision results in part from the opportunity offered to members of Congress to match their positions to that of their respective states and districts. “The Supreme Court’s leadership on the civil rights issue allowed legislators to play to their individual constituencies by either directing blame at the Court or lining up with it” (149).

Even if an event like a Supreme Court decision stimulates support and opposition that take the form of thesis and antithesis, dialectical causation requires the cooperation of authoritative actors. Dialectical causation can only take place if other parts of the political system view the clash between thesis and antithesis as a reason to reconsider the direction of public policy. This reconsideration came after the demonstrations in Birmingham in 1963, and again after the Selma marches of 1965. Dialectical change requires support for the argument of the thesis from authoritative actors, but a lack of will to take difficult steps make that change reality. Dialectical conflict between thesis and antithesis overcomes this lack of will.

Here my argument follows that of Michael Klarman in *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality*. He focuses on how *Brown* gave support to white segregationists like Bull Connor:

The violence used by white law enforcement officers in the South against peaceful black demonstrators repulsed national opinion and led directly to the passage of landmark civil rights legislation. *Brown* was less directly responsible than is commonly supposed for putting those demonstrators on the street, but it was more directly responsible for the violent reception they encountered (441).

While Klarman does not use a specifically dialectical framework in his analysis, he also argues that backlash to the Court eventually contributed to integrationist policy change.

After *Brown*, the thesis in the dialectical pattern was the direct action civil rights movement, and the antithesis was the backlash among Southern whites.⁹⁸ The Supreme Court did not create either phenomenon, but it did empower them and helped to focus

⁹⁸ I exclude the work of the NAACP and others to end segregation through the courts, since I am focusing on extra-judicial effects. This process is important to the dialectical change process mainly by its initial lack of success in most southern states, which created an opening for a more indirect change process.

their energies. The Court's impact on the antithesis side was more consequential and immediate; it supported both sides of the conflict.⁹⁹ This dissertation argues that *Brown* had an impact on the change process that led to legal integration, but only in conjunction with other forces.

The indirect impact of *Brown* took a dialectical form because it rearranges existing components of Southern politics into a pattern that led to the creative conflict of 1963. George Wallace was an active young Democratic politician before *Brown*, and was committed to maintaining segregation. But after the decision, he was forced to reinvent himself as a militant segregationist. Bull Connor was an active participant in state and local politics, and he had some success with his unabashed support for segregation. But the backlash to *Brown* created the conditions that put the power of Birmingham law enforcement in his hands.

The role of a militantly segregationist elected official like Bull Connor becomes clear when the Birmingham demonstrations are compared with the 1962 Albany, Georgia campaign of Martin Luther King, Jr.'s Southern Christian Leadership Conference. Albany Police Chief Laurie Pritchett reacted to black protesters in a manner that prevented violent confrontations that would attract media attention. With knowledge that the SCLC targeted his small city in the majority-black but white-ruled area of southwest

⁹⁹ By arguing that *Brown* contributed to the pro-integration side of the civil rights struggle, I am not taking a position with respect to the debate among historians of the period about what people or events were most important in the larger struggle. My argument rests on the more limited claim that *Brown* provided some support to the opponents of segregation (for a detailed review of competing explanations for movement activity and success see the bibliographic essay in Payne). One important manifestation of that support was that many important direct action protest actions were attempts to implement court orders, which relied on *Brown* as precedent, that ordered public places and accommodations be integrated. Also, Stephan

Georgia, he arranged with other law enforcement jurisdictions in the area to rent space at their jails. When the protests began, his officers would arrest protestors for violation of local segregation laws, and send them away to jail. Protestors would then quickly be released, creating a low-intensity cycle that kept SCLC marchers from either filling the jails or sparking violent reaction.¹⁰⁰ The contrast with Birmingham a year later shows the necessity of Connor to bring the stark visual images of Jim Crow to television viewers outside the South. Connor had regained his position of power for just long enough to provide the antithesis to SCLC's thesis.

In his history of American politics during the Warren Court period, Lucas Powe argues that "there is no doubt that Birmingham was the catalyst for the Civil Rights Act of 1964."¹⁰¹ He also connects the actions of Bull Connor to the backlash against *Brown*, and emphasizes the importance of the 1963 demonstrations in transforming the national political agenda. "*Brown v. Board of Education* had brought out the worst in the American South, and King had learned how to reflect that southern behavior to the American North to bring out the best in the country."¹⁰² The Supreme Court stimulated both southern regional militancy, and national support for legal integration. As the causal pattern played out in the decade after *Brown*, the first reaction was necessary to bring about the second.

Wasby (1995) argues that *Brown* caused civil rights organizations and liberal private foundations to invest in litigation (p. 32).

¹⁰⁰ Branch 600-07, 632.

¹⁰¹ See also McCloskey and Levinson pp. 221-22.

¹⁰² Powe 226. Lewis (2006) argues that "non-violent campaigns provided watching newsmen with particularly vivid copy of the ongoing nature of racial inequality in areas of the South" (p. 157). See Eskew p. 311 for a discussion of the Kennedy administration's quick pro-integration reaction to the Birmingham demonstrations.

Three characteristics of Supreme Court-stimulated dialectical change merit mention in the context of assessing the power of the Court to impact society. First, as discussed above, opposition to the Court in some cases is both evidence of a lack of direct effect, and of an indirect effect that ultimately helped to bring about the social change sought by the original opinion. Such an assessment is impossible in the period immediately following the issuance of an opinion. In some cases, like the reapportionment decisions, opposition to the Court's decision is initially strong but then dissipates. In other cases, like the decisions striking down New Deal measures before 1937, opposition to the Court ultimately leads to a policy settlement adverse to the original opinion. A retrospective analysis that includes the possibility of dialectical causation, however, can identify causal connections a linear-focused analysis like Rosenberg's cannot.

Second, a Supreme Court opinion will not necessarily empower support and opposition to its position in equal measures. Thus thesis and antithesis will often progress toward conflict at different rates. In the case of school integration, the stimulus the Court provides to non-judicial actors is received by asymmetrical adversaries in an existing conflict. The resources available to the defenders of segregation were far more powerful initially than those available to the proponents of integration. Politicians like George Wallace and Orville Faubus could, by shifting their stances on racial issues at the right time, gain control of both the state Democratic Party and state government. The resources available to civil rights activist were building in 1954, as black veterans returned from duty in World War II and Korea, and shifts in membership and leadership

of black churches provided a fertile ground for protest campaigns.¹⁰³ Bull Connor could be back in office within two years of *Brown*, and editorial pages in mainly white-oriented newspapers could within weeks be filled with editorials and letters to the editor defending segregation. The building of a movement that could frontally challenge segregation successfully took much longer. If the creative conflict is delayed, then the dialectical causal effect of a Supreme Court opinion is delayed.

Third, the dialectical change process can expand its policy focus as it works its way through the political system outside of courts. The 1964 Civil Rights Act that was at the end of the dialectical process sparked by *Brown* had a policy scope that reached far beyond that of the Court's opinion. The two most transformative results of the act, the banning of segregation in employment and public accommodations, were not directly addressed by *Brown* or *Brown II*. A dialectical change process, in conjunction with other parts of the political system, can magnify the effect of a Supreme Court decision.

This dialectical causation account presents an alternative account of the effect of *Brown* than that presented by Gerald Rosenberg. The history of backlash highlights a kind of effect that is minimized in *The Hollow Hope*. Rosenberg correctly counts the segregationist backlash to *Brown* as evidence that the decision did not directly, or quickly, lead to the social change that was clearly anticipated by Warren's language and

¹⁰³McAdam argues that the growing urbanization of the southern black population in the twentieth century provided the necessary context for civil rights organizing. He contrasts the urban church, with congregations affluent and numerous enough to support an educated and activist clergy, with the rural church that was dependent on circuit-riding part-time ministers and financial support from white landowners. He also highlights the importance of the small but rapidly growing group of college-educated blacks.

hoped for by the decision's supporters.¹⁰⁴ He does not entertain the possibility, however, that in the long run backlash could contribute to the fall of segregation. The importance of the direct action protests of the 1960s is presented as evidence of *Brown*'s lack of effect. Rosenberg argues that the later success of the direct action movement, particularly the Southern Christian Leadership Conference, owes little or nothing to the Supreme Court. The proof for this finding of little significant indirect effect comes from the long time that elapsed between *Brown* and *Brown II* and the SCLC successes and growth in civil rights organization membership of the middle 1960s.¹⁰⁵

If the inquiry into judicial impact is broadened to include effects, and not merely effectiveness, then the data analyzed in previous chapters is relevant. Increases in the volume and constitutional focus of newspaper opinion are evidence that Supreme Court decisions have measurable effects on political debate in non-judicial fora. A transformed electoral environment, as evidenced by changes in the kind of politicians elected in Southern states, is both evidence of *Brown*'s effect and its lack of effectiveness, at least in the near term. Dialectical causation provides a channel for backlash to a Court decision to later affect politics in a way that promotes and expands the social change originally sought by the Court.

The shift in southern elections after *Brown v. Board of Education* did not follow the integrationist direction of the opinion's argument. Compliance with the Court's decision was made less likely by the reaction it stimulated. Such reaction remains an effect of the decision, and evidence of the impact of a Supreme Court decision. *Brown*

¹⁰⁴ Rosenberg 78-82.

changed the opportunity structures available for ambitious Southern politicians, and thus changed Southern politics. It enhanced the election prospects of strong segregationists, and forced moderate progressives to alter their campaigns in order to get elected, ending a comparatively moderate period of gubernatorial elections. Like the newspaper opinion analyzed in Chapter 3, Southern elections were appropriated as a forum for countering *Brown*'s constitutional argument, and the victors in those elections were able to back up their constitutional argument with the coercive and violent power of state government.

¹⁰⁵ Rosenberg 131-155

Chapter 5: Conclusion

The reaction to *Brown v. Board of Education* in the American South shows both the limits and possibilities of a Supreme Court decision. Public schools in the region would remain segregated for at least a decade after the decision, but political debate and elections were transformed. Southern whites changed how they wrote about race in the public forum of newspaper opinion, and they changed their voting behavior. Debate over civil rights was more likely to discuss constitutional issues, and militant segregationists were more likely to gain public office. These shifts, which emerged from the indirect effects of *Brown*, altered the politics of race in the South and the nation.

The preceding chapters have focused on the extra-judicial effect of *Brown v. Board of Education*, presenting findings from newspaper opinion and statewide elections. This chapter connects these findings to each other, and draws insights from those findings that speak to the general project of political science scholarship on the Supreme Court. First I comment on the general project of Gerald Rosenberg in *The Hollow Hope*, the work that both stimulated and structured this inquiry. Second, I connect findings from newspaper opinion and statewide elections through the use of the concept of racial institutional orders, developed by Rogers Smith and Desmond King. Third, I present three generalizable patterns that emerge from the preceding analysis of *Brown*'s indirect effect, and connect them to patterns emerging from the contemporary politics of same-sex marriage. I close with a brief discussion of future research avenues that are suggested by this dissertation.

THE HOLLOW HOPE AND THE LIMITS OF POLITICAL SCIENCE **SCHOLARSHIP AS STRATEGIC ADVICE**

Preceding chapters, particularly Chapter 4, have built on and responded to Rosenberg's thesis of limited Supreme Court impact in the case of *Brown v. Board of Education*. In particular, his identification of legislative and executive actions in 1964 and 1965 as the cause of eventual integration of southern public schools is the starting place for the dialectical causation argument involving electoral backlash. I argue that he was correct about the impotence of the Court to effect policy change directly, but he ignores or dismisses crucial indirect effects. The identification of electoral backlash as a contributing factor to policy change in the 1960s emerges from the strictly empirical focus of this project, which seeks to identify and measure indirect effects of *Brown*. Rosenberg also treats the Court as a political institution, but as part of a strategic advisory for progressive political activists. Rosenberg's broader perspective, which includes both empirical and normative analysis, leads to a discounting of backlash as a contribution to later policy change.

Rosenberg's focus on the court-centered view of social change in the civil rights era leads to both the strengths and weaknesses of his argument. The major contribution of *The Hollow Hope* is to subject commonly-held perceptions about *Brown*'s impact to empirical testing. Rosenberg reviews available data about school desegregation and other pro-integration effects, and finds that the Supreme Court had little impact on the ending of legal Jim Crow segregation. He helps to clear away a view of racial change that treats the lofty integrationist rhetoric of Warren's *Brown* opinion as descriptive of future

events, and that attributes causal significance to *Brown* when events happened many years after the decision.

Rosenberg's audience for this critique of the *Brown*-centered change narrative is clearly broader than professional academics who study judicial impact. His argument for a limited conception of the capacity of courts to cause social change serves as foundation for a broader critique of the choices that activists and social movements make in working for social justice and change. *The Hollow Hope* is not just a work of empirical social science. It is also a call for a progressive politics that focuses more on electoral outcomes and less on favorable judicial rulings.

This goal of presenting strategic advice to progressive movements drives Rosenberg to a narrow understanding of judicial impact. He focuses on direct measurable effects, and finds *Brown* wanting. He successfully undermines the fall of Jim Crow segregation as an example of social change brought about by successful litigation. He thus produces a work that both speaks to the interests of social scientists in explaining social change, and provides a thought-provoking argument about how resources should be allocated by those groups and individuals that hope to change society.

But social scientists are interested in the effects of court decisions beyond Rosenberg's focus on direct effects that lead to measurable social change. Previous chapters of this dissertation have focused on two kinds of effects that are either ignored by Rosenberg or dismissed as either irrelevant to his inquiry, or classified as evidence of *Brown*'s impotence. The newspaper opinion analysis presented in Chapters 2 and 3 demonstrates that the Supreme Court altered political debate about race in measurable

ways. This effect did not lead to pro-integration change; what limited effect increased and more-constitutionally-focused debate had on social change was likely to reinforce that status quo. The limited or pro-segregation effect of changed debate does not lessen its status as a social phenomenon that was caused by the Supreme Court.

The backlash history discussed in Chapter 4 highlights another kind of effect that is minimized in *The Hollow Hope*. Rosenberg correctly counts the segregationist backlash to *Brown* as evidence that the decision did not directly, or quickly, lead to the social change that was clearly anticipated by Warren's language and hoped for by the decision's supporters.¹⁰⁶ He does not entertain the possibility, however, that in the long run backlash could contribute to the fall of segregation. The importance of the direct action protests of the 1960s is presented as evidence of *Brown*'s lack of effect. Rosenberg argues that the later success of the direct action movement, particularly the Southern Christian Leadership Conference, owes little or nothing to the Supreme Court. The proof for this finding of little significant indirect effect comes from the long time that elapsed between *Brown* and *Brown II* and the SCLC successes and growth in civil rights organization membership of the middle 1960s.¹⁰⁷

A focus on timing is at the core of both the strengths and weaknesses of *The Hollow Hope*. Rosenberg makes a significant contribution to political science scholarship on judicial impact by comparing the actual timeline of the civil rights era with the commonly-held understanding of *Brown* as a transformative decision. The focus on the timing is a way to assess the comparative impact of different events in a given

¹⁰⁶ Rosenberg 78-82.

issue area. Rosenberg's finding that courts are comparatively weak actors in the policy change process provides a useful starting point for research, like that presented in this work, that attempts to better integrate our understanding of courts with other parts of the political system.

This narrow focus on timing, which excludes the possibility that opposition to a court decision could later contribute to positive social change,¹⁰⁸ fits well with the orientation toward strategic advice for progressive activists. Even if I am correct in arguing that *Brown* contributed to the fall of legal segregation by stimulating a useful creative antagonist for the direct action civil rights movement, Rosenberg's strategic argument likely still stands. If the effect of a court decision that is sought by a social movement is to stimulate a reaction that strengthens the movement's opponents like Bull Connor and weakens its friends like Jim Folsom, then a focus on venues outside of litigation makes sense. The full history of the civil rights era, with desegregation of most Southern school systems coming over a decade after *Brown*, is certainly a cautionary tale about a movement that relies on judicial allies to help it confront elected enemies. But the aim of political science, or at least this work of political science, is not to interrogate the choices of heroic historical actors who were not as effective as we would like to believe they were.

¹⁰⁷ Rosenberg 131-155.

¹⁰⁸ Johnson and Canon, citing the possible effects of generational change, argue that "Rosenberg's conception of causality is too time-bound. History teaches us that perspectives are not changed overnight; a decade or even a generation may pass before a major impact occurs" 206-07).

BROWN AND THE RESPONSE OF WHITE SUPREMACIST INSTITUTIONS

Previous chapters have treated newspaper opinion and electoral backlash as separate and discreet phenomena that demonstrate the importance of Supreme Court opinions outside the judicial system. Both stand as evidence that Supreme Court opinions have significant and measurable indirect effects. They are connected, however, in their relationship to the politics of race in the South and the nation. The newspaper opinion discussed in Chapter 2 is connected to the elections discussed in Chapter 4 in that both are responses to *Brown v. Board of Education* by white southerners. Beyond their shared status as extra-judicial responses to the Supreme Court, they are not obviously connected causally. Militant politicians benefited from a supportive media, and could regard the increase in editorials and letters to the editor about segregation as a validation of their focus in office. But the data discussed above does not support generalizations about the causal connections between newspaper opinion in the 1950s and backlash in Southern elections in the 1950s and 1960s. James J. Kilpatrick's editorials in the *Richmond News-Leader* were directed at the Virginia legislature, and attempted to rally mass support for a special session that would take steps to block and delay court-ordered integration. It is conceivable that his writings, and the letters to the editor they stimulated, might have helped to bring about the massive resistance campaign in Virginia.¹⁰⁹ But support for segregation and distrust of federal intervention in state affairs was certainly not a creation of newspaper editorials, and opposing the Supreme

¹⁰⁹109 Bartley 130, 183. See also Thorndike in Lassiter and Lewis 1998.

Court was a useful strategy for the Byrd machine in its attempt to fight off reformist elements at the polls.¹¹⁰

The two reactions to *Brown* are connected, however, in that they both are defenses of southern white supremacy. This shared origin provides a starting point for discussing the relationship between the two phenomena, and how they reflect general patterns of response to Supreme Court decisions. These connections become clearer when southern support for white supremacy is understood as not just an expression of racism or self-interest on the part of citizens and politicians, but as a network of ideas and relationships embedded in regional and national political institutions. The unique character of the threat to this durable network that *Brown* represented helps to illuminate the connections between parts of the backlash to the decision. Placing the data discussed above within the conceptual framework of a racial institutional order used by some American Political Development scholars helps to theorize and describe those connections.

Brown v. Board of Education was a massive shock to southern white supremacy not because it was an example of a new national commitment to racial equality that was embodied in national political institutions and arrangements. It was a shock to southern white supremacy because it ran counter to the national state of affairs. The defenders of segregation controlled so many positions of power in the House, Senate and national Democratic Party that legislative action was not a serious threat. Even Franklin Roosevelt, the most powerful president since at least the Civil War, was unwilling to

¹¹⁰ Bass and Devries 347.

confront southern power on Capitol Hill by supporting a federal anti-lynching bill.¹¹¹ Southern state governments were controlled by segregationists. Many of the opponents of segregation were part of a Democratic Party that blocked their goals. A southern white citizen was protected behind a fortress of men committed to defending the privileges of whiteness, and powerful enough to protect it from legislative and executive incursion.

In 1954 the Supreme Court became a threat to white supremacy that was beyond the direct control of segregationist Southern Democrats. Previous chapters have examined two manifestations of this response, in newspaper opinions and elections. These two responses are united not only by their opposition to the Supreme Court, but by their shared origin in the institutionalized politics of white supremacy.

The dialectical conflict that was stimulated by *Brown* emerges from the interaction of the Supreme Court with the politics of race in the United States. This conflict occurred within a pattern of coalition and conflict that scholars of American Political Development have called “racial orders.” The concept of racial orders, which is a sub-set of a larger category of institutional orders,¹¹² helps to integrate the findings of this dissertation into a broader theory of institutional change. Analyzing *Brown* through this framework also helps to identify the particular unique role extra-judicial effects play in social change, and also helps to integrate the newspaper opinion data discussed in Chapters 2 and 3 with the discussion of statewide elections in Chapter 4.

¹¹¹ McMahon (2004) argues that Roosevelt, and then Truman and Eisenhower, were able to use the resources of the presidency to lay the groundwork for later pro-integration policy change, particular with judicial appointments.

¹¹² See Orren and Skowronek 2004, ch. 3.

Rogers Smith and Desmond King argue that much of American political development and history, as well as much of contemporary politics, is structured by racial orders. Such orders are “coalitions of state institutions and other political actors and organizations that seek to secure and exercise governing power in demographically, economically, and ideologically structured contexts that define the range of opportunities available to political actors.”¹¹³ They argue that American politics since at least the Civil War has been the site of conflict between two institutional orders with opposing understandings of how society should deal with racial differences. They designate one order as white supremacist and the other as transformative egalitarian. These orders were racial in that they “used racial concepts, commitments and aims in order to bind together their coalitions and structure government institutions.”¹¹⁴ According to Smith and King, much of American political history is affected by the conflict between these two orders.

The institutionalized white supremacy that *Brown* threatened was more than just racist ideas held by southern white citizens or elected officials. It was a network of ideas and institutional power that integrated mass and elite actors, and used the power of national and state governments to maintain the privileged status of whites in southern society. This network is best characterized as institutional order because its members drew power and influence from existing government institutions, and the network was durable over time.

The white supremacist order, as conceptualized by Smith and King, often came into conflict with the competing transformative egalitarian order. In discussing the

¹¹³ Smith and King 75.

aftermath of the Civil War, they argue that this transformative egalitarian order, which drew strength from the antislavery order that it overlapped with but was distinct from, produced “new constitutional, administrative, political, economic, and social institutions to promote greater equality.” These changes, while temporarily successful in integrating black southerners into the broader politics and society, were soon limited by the work of the white supremacist order, which “eventually regained dominance in the modified form of the Jim Crow system of segregation and disenfranchisement that largely prevailed until the civil rights era of the 1960s.”¹¹⁵ The continued success of this order maintained a national political equilibrium that, until 1954, prevented consequential national government action on behalf of black southerners.

Brown destabilized an institutional equilibrium that provided power and opportunities to white southern politicians. Southern politicians could exert power and influence in areas beyond the politics of race, and use their positions of power to maintain white supremacy. In particular the national Democratic Party was the site of Southern attempts to mold national political institutions in a way that would further buttress southern segregation. The backlash to *Brown* ended this era of flexibility and opportunity for Southern politicians. Their available routes to state and national power were narrowed, as militant support for segregation dominated statewide elections. Debate over race shifted away from venues where Southern influence was strong, like Congress and the Democratic National Convention. The battle in the courts, in which segregationists had lost several skirmishes in cases like *McLaurin and Sweatt*, was one where the South

¹¹⁴ Ibid 75.

lacked opportunities for influence. The work of building and maintaining influence in national institutions was for the first half of the twentieth century a central project of members of the white supremacist institutional order. The backlash against *Brown*, given conceptual form as constitutional politics by writers like Kilpatrick, was a different kind of response to the growing power of the transformative egalitarian order in national politics.

The move to interposition, however, was also either an unsuccessful rearguard action or a blind alley of militant resistance. If judged as an attempt to stop the integration of Virginia public schools, interposition was at most a delaying tactic. It did lead to the denial of free public education to thousands of students, but only for a short time. Its effect on elections and government was to temporarily strengthen the Byrd machine, but eventually to weaken it by alienating voters outside of the machine's Southside base.¹¹⁶ Virginia's pattern of school integration after *Brown* was similar to those of other peripheral Southern states, with all six having less than ten percent of black children attending public schools with white children until a rapid increase in the mid-1960s.¹¹⁷

When assessed as an extra-judicial effect of a Supreme Court decision, the reaction to *Brown* stands as a significant phenomenon in the development of American

¹¹⁵ Ibid 81.

¹¹⁶ Southside Virginia is the part of the state with the most traditionally Southern demography, characterized by rural areas, small towns, and a large black population. Opposition to the massive resistance school closures was strongest in the more metropolitan areas of Northern Virginia and the Tidewater region around Norfolk. These areas began in the 1960s to back liberal insurgent Democrats, as well as Republicans, so that by the early 1970s the Byrd machine was no longer a viable force in statewide politics. Its one remaining artifact was Senator Harry Byrd Jr., who ran as an independent in 1970 and 1976 to avoid possible defeat in the Democratic primary.

politics. It stimulated the white supremacist institutional order to take over particular parts of the political system to present an opposing constitutional argument to the Supreme Court's position. The response came from all parts of the white supremacist order: politicians in the form of increased militancy; voters in the form of increased support for those militant politicians; local civil society in the form of the White Citizens' Councils;¹¹⁸ state government in the form of Sovereignty Commissions;¹¹⁹ and individual citizens in the form of letters to the editor.

I argue that the newspaper opinion discussed in Chapter 2 and the election backlash discussed in Chapter 4 are both parts of this response of this racial institutional order, or at least part of the response of southern white society in general.¹²⁰ This response occurs in the aggregate, as shown by the existence of judicialization effects across the five newspapers in the Chapter 2 data set, and in the gubernatorial elections analyzed by Earl Black and others. A Supreme Court opinion is uniquely qualified to elicit this kind of response. It is presented in a form that connects the position of the Court's majority to concepts of justice and finality. It is presented as an authoritative interpretation of the Constitution, which is venerated by American political culture and intentionally difficult to amend.

¹¹⁷ Rosenberg 433.

¹¹⁸ See McMillen 1994.

¹¹⁹ See Katagiri 2001.

¹²⁰ The data from black newspapers discussed in Chapter 3, which is characterized by a constant focus on racial issues and an increase of constitutional focus after *Brown*, fits into the racial egalitarian part of the racial orders framework of Smith and King. The fact that discussion of racial issues does not increase after *Brown*, in contrast to white newspapers, demonstrates the asymmetrical nature of the conflict between racial institutional orders. One of the effects of the success of the white supremacist order is the ability of white southerners to focus on social and political issues without directly confronting their racial component.

The finality presented in an opinion like *Brown*, when combined with life terms for appointed justices, makes the Supreme Court both a subject of election campaigns but not subject to the will of voters. The results of elections in the South for over a decade were affected by this asymmetry of political conflict, with militant segregationists successfully running against a Supreme Court that was not on the ballot. White Southerners would likely have voted to, as billboards across the region instructed, “Impeach Earl Warren.” Their dissatisfaction was instead channeled into support for politicians like Bull Connor and the making of constitutional argument in forums like newspaper opinion pages.

TRANSFORMED PATTERNS OF CONFLICT: A SUPREME COURT OPINION OUTSIDE OF THE JUDICIAL SYSTEM

The empirical analysis presented in previous chapters has focused on *Brown v. Board of Education* and its extra-judicial effects. Along with demonstrating that Supreme Court decisions can have massive and significant effects outside the judicial system, the data discussed here support the following three empirical generalizations. Initial observations about the ongoing conflict over same-sex marriage rights highlight how the kind of inquiry presented in this dissertation can be replicated in other and more contemporary issue areas.

Expansion of Constitutional Debate into New Venues

The reaction to *Brown* expanded the portion of the political system that was a venue for debate about the constitutionality of segregation. The main evidence for this pattern of extra-judicial effect is the newspaper data set analyzed in Chapter 2, although

black newspaper data and the content of statewide election campaigns also follow this pattern. The most consequential new forum for constitutional debate was the public space of Birmingham, Alabama in 1963, where constitutional argumentation took the form of non-violent direct action protest and law enforcement violence. I have argued that this expansion of debate into new venues is best understood as judicialization, with new parts of the political system taking on characteristics of appellate litigation of judicial review.

This pattern of expanded constitutional debate is visible in the reaction to *Lawrence v. Texas* and *Goodridge v. Department of Public Health*, the Texas sodomy and Massachusetts same-sex marriage decisions. Three components of that reaction in particular merit mention. First, Congress took up a proposal to amend the Constitution to ban same-sex marriage, although a test vote in the Senate fell far short of the required 67 votes needed to send an amendment on to the states. Second, same-sex marriage became a significant issue in the 2004 presidential campaign. President George W. Bush expressed support for the traditional heterosexual definition of marriage, and publically supported the proposed constitutional amendment, even though as President he did not have any direct role in the constitutional amendment process.

Third, many states passed constitutional amendments banning same-sex marriage in the years after *Goodridge*,¹²¹ even though neither same-sex marriage nor even same-sex civil unions was possible under statute in any state with a proposed amendment in

¹²¹ Arizona in 2006 is the only state to reject such an amendment.

2004, 2005, or 2006.¹²² Fourth, some pro-gay rights local officials married same-sex couples as a kind of constitutional protest to the current lack of rights protections. In particular the mayors of San Francisco and New Palz, New York used the powers of their office to stage public same-sex marriage ceremonies. This use of official power to make highly public constitutional argument is analogous to the law enforcement violence ordered by Bull Connor, in that the powers of office are used to make constitutional argument in an unusual venue. These reactions to *Lawrence* and *Goodridge* constitute an effect similar to the judicialization discussed in previous chapters.

Expansion of Policy Scope of Conflict

The extra-judicial reaction to *Brown* contributed eventually to policy change that went far beyond the original scope of the 1954 opinion, eventually including desegregation of employment, public accommodations, hospitals, and voting rights. The contemporary debate over same-sex rights that was transformed and amplified by court rulings is still relatively early in its development, and parallels to the civil rights era are still developing. But one particular phenomenon is an example of reaction to a Supreme Court decision, in this case *Lawrence*, that quickly moved beyond the policy scope of the majority opinion.

Justice Kennedy's majority opinion concerns itself with the question of whether or not same-sex couples have the right to engage in intimate sexual contact. He does not

¹²² Some of the 2004 amendments were timed to coincide with the presidential election to increase turnout among social conservatives, benefiting the Bush reelection effort. Although flawed analysis by journalists and commentators attributed Bush victories in Ohio and other key states to these amendments, subsequent analysis has not found evidence of any consequential effect on presidential election turnout (Fiorina 146-49).

extend his analysis to whether or not laws limiting same-sex marriage to heterosexual couples are constitutional.¹²³ The public reaction to the June 26 decision, even in the months before the *Goodridge* decision in November, was dominated by discussion of marriage rights. This expansion of policy scope, which was accelerated by the Massachusetts Supreme Court and the 2004 presidential election, has moved the debate over same-sex rights, which in *Lawrence* was focused on a rarely-enforced state statute, to questions that implicate vast amounts of public and private law. The opposition to the decisions, and the possibility of same-sex marriage rights in general, raises the possibility that an institutional order has developed around the defense of traditional cultural norms, which operates in similar ways to the white supremacist order of the 1950s and 1960s. If this order exists, it likely owes its existence partly to previous Supreme Court decisions on prayer in schools and abortion.

Agenda-Setting that Promotes Policy Settlement

The dialectical change process, stimulated and influenced by *Brown*, presented the consequences of Jim Crow segregation in a form that led to a new national consensus supporting legal integration. This process took nearly a decade to develop, and the extra-judicial effect of the Supreme Court decision eventually combined with other extant components of southern and national politics to eventually bring about the agenda-setting events of Birmingham in 1963. Some recent events in the unfolding conflict over same-sex marriage rights parallel those developments, in ways that may indicate movement

¹²³ Justice Scalia's dissent does make the argument that Kennedy's analysis will inevitably lead to same-sex marriage rights.

toward an eventual new legal and constitutional order that includes the right of same-sex couples to marry.

So far only three state high courts, in Massachusetts, California and Connecticut, have used the power of judicial review to establish a right to same-sex marriage.¹²⁴ The three states differ in the kind of legal framework that existed before the court decisions. Massachusetts had a legislature-passed law defining marriage as between a man and a woman, and California voters had amended the state constitution to ban same-sex marriage in 2000. The Connecticut high court overturned a civil union system that had passed the legislature and been signed by the governor. The reactions of state government in Massachusetts and California, however, share a pattern that is working to present same-sex rights in a manner conducive to a new policy consensus.

The initial reaction to *Goodridge* by the Massachusetts state legislature was negative. Legislators asked the state supreme court for an advisory opinion about whether the new constitutional standard could be satisfied by a civil union system. The Massachusetts Supreme Court reacted differently to such a request than the Vermont Supreme Court did in 1999. The Massachusetts legislature then began the process of amending the state constitution to overturn *Goodridge*. The Massachusetts constitution requires an amendment to pass the legislature twice before it can go to voters in a referendum, and the second passage cannot come until after an intervening election. When legislators returned to the matter in two years later, they declined to pass the

¹²⁴ Currently Vermont has a civil union system that was passed by the legislature to comply with a state supreme court ruling, and New Hampshire and New Jersey have legislature-passed civil union laws that were not the result of judicial action.

amendment. The legislature has since even passed a bill opening same-sex marriage proceedings to non-Massachusetts residents.

The California constitution allows this process of popular evaluation of a state high court decision to move much faster than in Massachusetts. The ability of citizens and interest groups to bypass the legislature and place a constitutional amendment referendum on the statewide ballot through petitions made it inevitable that the question of same-sex marriage would be put before voters on the November 2008 general election ballot, specifically called Proposition 8. The narrow victory of the referendum banning same-sex marriage is part of a process that is following the pattern of the dialectical conflict process outlined in Chapter 4. The institutional path taken by backlash to a judicial decision was different in 2008 California than in the South of the 1950s and 1960s, owing to the differences in available institutional resources. Segregationist politicians did not have a plebiscitary option to challenge *Brown*, since the federal constitution has no provision for amendment through referendum. A delaying action pursued through control of state governments was the option available to Jim Crow's defenders.

The long-term finality of the victory of Proposition 8 in California is unclear at this time. The same easy access to constitutional amendment through referendum could in the future be harnessed by supporters of same-sex marriage. There is also the possibility that the United States Supreme Court might take up the issue of same-sex marriage in the future. But recent events constitute a statewide popular evaluation of the constitutional argument for same-sex marriage rights. The nationwide post-election

protests by supporters of same-sex marriage might be the beginning of a focused national debate on the issue. All of the preceding possibilities would constitute examples of the kind of court-stimulated agenda change that is part of the dialectical change process.

A similar process that reached different results took place in Vermont after that state's high court forced the state legislature and governor to pass a same-sex civil union law. Initial opposition was vocal and well organized, as several pro-civil union Republican legislators lost primary elections to social conservative opponents of civil unions. Republicans gained control of the state House in the November general election. Results were mixed however, as pro-civil union Democratic Governor Howard Dean was easily reelected, and Al Gore easily won the state. But opposition to civil unions faded, and Democrats regained the state House and increased their advantage in the state Senate in 2002, and in 2004 exit polls showed that 40% of voters supported same-sex marriage, 36% supported civil unions, and only 21% opposed both.¹²⁵

These state results could be the beginning of a national rethinking of the status of same-sex couples in state and federal law. Court decisions beginning with *Lawrence*, and continuing with state high court decisions, have stimulated the presentation of constitutional arguments by the opponents of same-sex rights. The casting of gay rights in the form of constitutionally-guaranteed individual rights has prompted a clear and sometimes coherent defense of heterosexual-only marriage. The national debate is now taking the form of the question: "Does legalizing same-sex marriage threaten core national values to the point that it should be forbidden by constitutional provision?" The

answer to this question seems so far to be no in Vermont and Massachusetts, and yes in California. These non-representative states, which are relatively fertile ground for gay rights arguments, might be the leading edge of a shift in national priorities, or the catalyst for reworking of state and federal law to constitutionalize heterosexual-only marriage. Either possibility would occur partly because of the contribution of courts to politics outside of the judicial system.

This dissertation has shown that the extra-judicial effects of *Brown v. Board of Education* were both empirically observable and a significant cause of policy change. The newspaper analysis in Chapters 2 and 3 shows that debate over race was transformed, with effects visible over time and across parts of the South. The focus of the *Richmond News-Leader* on interposition is the most coherent example of judicialized political debate after *Brown*, but it is not the only example. The electoral component of white backlash was also massive and durable, and Chapter 4 shows how it contributed to change in public policy through dialectical causation. These two concepts – judicialization and dialectical causation – illuminate significant indirect effects of Supreme Court decisions.

When a Supreme Court opinion interacts with politics outside the judicial system, it often stimulates conflict in new venues, and empowers particular sets of combatants in existing conflicts. *Brown* converted the editorial pages of southern newspapers into venues for constitutional argumentation, and empowered militants segregationists like George Wallace and Bull Connor. The letter writer in the *Birmingham News* who

¹²⁵Barone and Cohen 1692-1693. Gore's 10 percent victory was down from Bill Clinton's 18 percent win

argued that the Supreme Court had violated his right to a republican form of government was part of the same backlash as Bull Connor's use of law enforcement violence to put down nonviolent protesters. This study of the southern response to *Brown* reveals the unique role of the Supreme Court in reshaping politics outside the judicial system.

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Vita

Neal Robert Allen attended Castle High School, Newburgh, Indiana. In August, 1994 he entered DePauw University in Greencastle, Indiana. He received the degree of Bachelor of Arts from DePauw University in May, 1998. In August, 1998, he entered the Graduate School at The University of Texas at Austin. He has worked as an Assistant Professor of Political Science at The College of St. Benedict and St. John's University since August, 2006.

Permanent address: 544 Graceview Loop, St. Joseph, MN 56374

This dissertation was typed by Neal Robert Allen.